



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

सोमवार, 15 अक्टूबर, 2018 / 23 आश्विन, 1940

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 2nd August, 2018

No. Shram (A) 6-3/2018 (Awards) Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour

Court Shimla on the website of the Department of Labour & Employment, Government of Himachal Pradesh :—

Sl. No.	Reference/ Application	Title	Section
1	Ref. 21/11	Smt. Surjeet Kumari <i>V/s.</i> M/s Biogenetic Drugs Pvt. Ltd. Vill. Jharmajri, Baddi, Distt. Solan, H.P. through its Managing Director.	10
2.	Ref. 60/07	Rajinder Sharma & Ors. <i>V/s.</i> Managing Director, Woodville Palace Resorts Ltd., Woodville Palace, Raj Bhawan Road, Shimla-2.	10
3.	App. 48/14	Bhupinder Gautam <i>V/s.</i> H.P. State Civil Corporation, Ward No. 6, Shitla Mata Mandir Nalagarh, Distt. Solan, H.P. & Ors.	10
4.	App. 48/12	Pardeep Kumar <i>V/s.</i> Factory Manager, M/s Anuspaa Heritage Products Pvt. Ltd., Plot No. 3, Khadeen (Kamli) Parwanoo, Tehsil Kasauli, Distt. Solan, H.P.	10
5.	Ref. 109/16	Piar Chand <i>V/s.</i> The Executive Engineer, Division No.1, HPSEB, Charlie Villa, Chhotta Shimla, Shimla-2, H.P.	10
6.	Ref. 16/15	Ashwani Kumar <i>V/s.</i> Managing Director Committee Green Hills Engineering College Society Gandhi Gram, P.O. Bohali, Tehsil & Distt. Solan, H.P. through its Chairman.	10
7.	Ref. 06/16	Manoj Kumar <i>V/s.</i> The Commissioner- <i>cum</i> -Chief Executive Officer, Shimla Environment Heritage Conservation & Beautification Society (SEHB), Municipal Corporation Shimla, H.P.	10
8.	Ref. 92/17	Pramod Kumar Choudhary <i>V/s.</i> The Managing Director, M/s Elder Pharmaceuticals Ltd., Elder House, Plot No. C-9, Dalia Industrial Estate, Off Vira Desai Road Andheri (West), Mumbai-53.	10
9	App. 43/16	Dhuni Chand <i>V/s.</i> The Factory Manger, M/s Super Multicolor Pvt. Ltd., VPO Kishanpura (Baddi), Tehsil Nalagarh, Distt. Solan, H.P.	10
10.	Ref. No. 18/11	Raghuvir Singh <i>V/s.</i> M/s Biogenetic Drugs Pvt. Ltd., Vill. Kalujhanda P.O. Mandhala, Tehsil Baddi, Distt. Solan, H.P.	10
11.	Ref. 20/11	Surender Pal <i>V/s.</i> M/s Biogenetic Drugs Pvt. Ltd., Vill. Jharmajri Baddi, Distt. Solan, H.P. through its Managing Director.	10
12.	Ref. 22/11	Prithi Chand <i>V/s.</i> M/s Biogenetic Drugs Pvt. Ltd., Vill. Jharmajri Baddi, Distt. Solan, H.P. thorough its Managing Director.	10

13.	Ref. 17/17	Prem Chand Bhardwaj <i>V/s.</i> The Conservator of Forests Circle Rampur, Distt. Shimla, H.P. & Anr.	10
14.	Ref. 13/11	Vikram <i>V/s.</i> M/s Biogenetic Drugs Pvt. Ltd., Vill. Jharmajri Baddi, Distt. Solan, H. P. through its M.D.	10
15.	Ref. 23/11	Mohal Lal <i>V/s.</i> M/s Biogenetic Drugs Pvt. Ltd., Vill. Jharmajri Baddi, Distt. Solan, H.P.	10
16.	Ref. 24/11	Sandeep Kumar <i>V/s.</i> M/s Biogenetic Drugs Pvt. Ltd. Vill. Jharmajri Baddi, Distt. Solan, H. P. through its M.D.	10
17.	Ref. 19/11	Rakesh Kumar <i>V/s.</i> M/s Biogenetic Drugs Pvt. Ltd. Vill. Jharmajri Baddi, Distt. Solan, H.P. through its M.D.	10
18.	Ref. 65/18	Devender Kumar <i>V/s.</i> M/s Krishana Therma Pack, Nalagarh.	10
19.	Ref. 137/17	Workers Union <i>V/s.</i> Registrar, L.R. Group of Institutes, Solan.	10
20.	Ref. 154/17	Madan Lal <i>V/s.</i> Maharishi Markandeshwar Medical College, Solan.	10
21.	Ref. 70/18	Vikas Pathania <i>V/s.</i> M/s Astral Poly Technik Ltd.	10

By order,

NISHA SINGH, IAS,
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 21 of 2011

Instituted on 13-6-2011

Decided on 8-5-2018

Smt. Surjeet Kumari w/o Shri Dharam Pal, r/o Village & P.O. Elawala, Tehsil Shri Nainadevi, District Bilaspur, H.P. *...Petitioner.*

V/s.

M/s Biogenetic Drugs Pvt. Ltd., Village Jharmajri Baddi, District Solan, H.P. through its Managing Director *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate
For respondent : Shri Rajiv Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether the dismissal of the services of Smt. Surjeet Kumari w/o Shri Dharam Pal, Operator, by the Managing Director, M/s Biogenetic Drugs Private Limited, Village Jharmazri, Baddi, District Solan, H.P. w.e.f. 27.3.2010 after serving charge-sheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named operator is entitled to from the concerned management?”

2. Briefly the case of the petitioner is that she was engaged by the respondent company w.e.f. 17.7.2005 and worked as such till 27.3.2010 continuously. Her services had been terminated on 27.3.2010 without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). On 25.8.2009, the respondent company asked the petitioner and other workers to leave the factory and did not allow them to work in the factory and only the workmen employed through contractor had been allowed to work. On 26.8.2009, the petitioner along-with other workers came to the factory for work but the security officer stopped them to enter the factory and the gate of the factory was closed. The suspension order of the petitioner and other workers had already been pasted on the factory gate. On 26.8.2009, when the company had not allowed the petitioner and other workers to enter the factory, they made a joint complaint to the Labour Officer, Baddi upon which Labour Inspector came in the factory and made the inspection and summoned the respondent to his office for conciliation on 27.8.2009 on which date one official of the respondent handed over the letter of the company to the Labour Inspector. On 28.9.2009, on the intervention of the Labour Inspector all other workers except the suspended workers including petitioner were allowed by the respondent company to work. It is further asserted that on 5.9.2009, the petitioner received the joint chargesheet from the respondent which was replied by her and thereafter the enquiry was conducted which was not fair and on the report of enquiry officer, the petitioner was asked to file the comments to the show cause and after receiving the reply of the petitioner, her services had been terminated. The petitioner never instigated any worker to go on strike and did not cause the loss to the company in any manner. The enquiry officer right from very beginning started favouring the respondent, who used to right down the things which favoured the company. The petitioner also gave in writing against the enquiry officer but the same was not accepted. The enquiry officer had not allowed the petitioner to lead her evidence. The enquiry officer had not conducted the enquiry in fair manner and had also not followed the principle of natural justice. The termination of the petitioner is illegal and violative of the provisions of the Industrial Disputes Act, 1947.

3. By filing reply, the respondent averred that on 21.8.2009, the petitioner along-with other workers stopped work at about 3.00 P.M. and had not allowed anyone to perform duty. On 25.8.2009, the petitioner along-with other leading workers entered the factory and went to different departments and instigated other workmen to stop their work and resort to strike and as such the petitioner along-with other leading workmen who committed grave misconducts were suspended from duty *vide* letter dated 25.8.2009. On 26.8.2009, the suspension order was given to the petitioner and seven other employees, who refused to accept the same and the same were sent through post and copies were affixed on the main gate of the factory. It is further stated that the petitioner along-with other workmen committed grave misconduct for which they were suspended from the duty and a joint chargesheet dated 5.9.2009 was issued to them and when the reply filed by the petitioner was not found satisfactory, the management decided to hold domestic enquiry into the matter and constituted the enquiry jointly *vide* letter dated 14.9.2009. Shri Krishna Mohan Tripathi was appointed as an enquiry officer who conducted the enquiry. The enquiry officer was independent and impartial person who conducted the enquiry in fair and proper manner by following the principles of natural justice. The show cause notice was sent to the petitioner against

proposed punishment of dismissal along-with the enquiry report and thereafter the petitioner was dismissed from the employment *vide* letter dated 27.3.2010. Since, all the charges leveled against the petitioner, stood proved, her services had been terminated.

4. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondent. *vide* order dated 20.7.2013, this Court framed the following preliminary issues:

- (1) Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ...*OPP*.

5. Thereafter, *vide* order dated 2.12.2015, this Court decided the preliminary issue in favour of the petitioner and against the respondent by holding as under :—

“In view of my foregoing findings on preliminary issue, the enquiry conducted by the enquiry officer *vide* Ex. RW-1/B, is violative of principle of natural justice, hence, is hereby set aside and quashed.

6. Since, the preliminary issue was answered against the respondent, hence, on the basis of pleadings of the parties, the following issues were framed by this Court on 2.12.2015 and the respondent was afforded opportunity to lead evidence on merits in order to prove the alleged misconduct of the petitioner :—

- (1) Whether the petitioner has committed the misconduct as alleged in the chargesheet dated 5.9.2009 issued by the respondent? ...*OPR*.
- (2) If issue No.1 is proved in affirmative, whether the dismissal of the petitioner is legal and justified? ...*OPR*.
- (3) If issue No.1 is not proved in affirmative, then to what service benefits the petitioner is entitled to? ...*OPP*.
- (4) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No

Issue No. 2: No

Issue No. 3 : Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief : Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. In order to prove issue no.1, the respondent has examined four RWs. Shri Bal Mohan Sharma HR/Admn. Manager appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice dated 10.8.2009 Ex. R-1, notice dated 21.8.2009 Ex. R-2, letter to Labour Officer Baddi Ex. R-3, notice dated 25.8.2009 Ex. R-4, letter to SHO Ex. R-5, notice dated 28.8.2009 Ex. R-6, letter dated 27.8.2009 Ex. R-7, letter dated 28.8.2009 Ex. R-8, letter dated 29.8.2009 Ex. R-9, notice dated 21.2.2008 Ex. R-10, notice dated 22.2.2009 Ex. R-11, notice dated 23.2.2008 Ex. R-12, chargesheet dated 5.9.2009 Ex. R-13, settlement dated 3.3.2008 Ex. R-14 and letter dated 29.8.2016 to S.P Baddi Ex. R-15. In cross-examination, he admitted that the petitioner was engaged as a helper and she worked continuously till the date of her termination. He further admitted that the demand notice was raised by the workers in the year 2009 for increase in the wages. He denied that the workers had worked throughout the day on 21.8.2009. He admitted that on 24.8.2009, the respondent had ordered the increase in the wages of the workers. He denied that on 25.8.2009, all the workers were stopped by the respondent at the main gate of the factory. He further denied that the workers never went on strike in the month of August 2009. He admitted that no show cause notice was issued to the petitioner prior to the issuance of suspension order dated 26.8.2009. He denied that the work and conduct of the petitioner remained always satisfactory. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against her and no action was taken against her for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August 2009. He further denied that regular workers were stopped by the respondent and contractual workers were allowed to work in the month of August 2009. He also denied that the petitioner had never instigated any worker to go on strike. He admitted that the labour inspector visited the factory on 28.8.2009 and all the workers except the chargesheeted workers including the petitioner were allowed to resume the duties. He denied that false charges have been leveled against the petitioner to remove her from the job illegally. He further denied that the petitioner had never indulged in any misconduct and illegal activity. He admitted that the petitioner had completed 240 days in preceding twelve months.

11. Shri Arun Thakur, HR Officer stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he also reiterated almost all the averment as made in the reply. In cross-examination, he denied that the petitioner along-with other chargesheeted workers were not addressing the workers on 21.8.2009 and have never raised any slogans in the factory premises against the management. He denied that the workers had raised a demand to increase their wages. He further denied that the workers never went on strike on 21 and 25 to 27.8.2009. He also denied that the petitioner and other chargesheeted workers have never instigated any worker to go on strike. He denied that the respondent had stopped the workers at the main gate of the factory from doing the work. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against her and no action was taken against her for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August 2009. He further denied that the Labour Inspector had visited the factory in the month of August 2009 and found the management at fault. He admitted that the petitioner and other chargesheeted workers used to raise the demands of the workers before the management. He denied that the petitioner had never indulged in any misconduct and illegal activity.

12. RW-3 Shri Dalip Singh, Packing Manager also tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he stated similar facts as stated by RW-1 and RW-2 in their cross- examination.

13. Shri Surinder Singh Bisht, Labour Inspector, Baddi appeared into the witness box as RW-4 to depose that he has not brought the summoned record as there is no such record found in their office. He further stated that notice Ex. R-1 was signed by Shri Puran Chand Thakur, the then Labour Inspector, Baddi. In cross-examination, he admitted that a file is maintained in their office

regarding the conciliation proceedings of any case. He further admitted that in the notice Ex. R-1, it has not been requested to their office to initiate conciliation Proceedings.

14. On the other hand the petitioner examined Shri Harmeet Singh as PW-1, who deposed that he had worked as an operator with the respondent from the year 2006 till the year 2010. He further deposed that he was present in the factory on 21.8.2009 and the petitioner had never stopped him or any other worker from doing the duty and on 24.8.2009, he was also present in the factory and the petitioner had never misbehaved with any official on that day and had never used any foul language against any of the official. He also stated that the petitioner and other office bearers of the union used to espouse the cause of the workers before the management including the enhancement of bonus and the services of the petitioner were terminated as she along-with other office bearers of the union raised the demands of the workers. In cross-examination, he denied that on 10.8.2009, all the workers have gathered outside the canteen and stopped the work with the demand to raise their salary. He further denied that the petitioner along-with other workers namely Raghuvir, Vikram, Mohan Lal, Surender Pal, Sandeep Kumar, Prithi Chand and Rakesh Kumar were leading and instructing the other workers to go on illegal strike. He also denied that on 21.8.2009 at about 3.00 P.M., the workers have stopped the work at the instance of the petitioner and aforesaid workers. He denied that on 23rd and 24th August, 2009, the workers slowed down the production. He further denied that the workers were not allowed to enter inside the factory by the petitioner and aforesaid workers from 25.8.2009 to 28.8.2009.

15. The petitioner herself appeared into the witness box as PW-2 and tendered in evidence her affidavit Ex. P-1. In cross-examination, she denied that on 21.2.2008, the workers went on the strike. She further denied that no notice of strike was given to the management. She also denied that on 21.2.2008, she along-with other workers namely Raghubir, Surender Pal, Sandeep Kumar, Rakesh Kumar, Mohan Lal, Prithi Chand and Vikram instigated the other workers to go on strike. She denied that they had told the management if their wages were not increased then they will not allow to run the factory. She expressed her ignorance that prior to 21.2.2008, they have raised a demand charter on which the Labour Inspector-cum-Conciliation Officer started the conciliation proceedings and the said proceedings were pending on 21.2.2008. She denied that after 21.2.2008 a chargesheet was issued to her and aforesaid workers and were suspended. She further denied that after the settlement Ex. R-14 they were taken back in service and the chargesheet was dropped. She also denied that on 10.8.2009 at about 1.30 P.M., she along-with the aforesaid workers instigated all the workers to stop the work. She denied that on 21.8.2009, at about 3:00 P.M. the workers have stopped the production on their instigation. She further denied that she along-with aforesaid workers were suspended on 26.8.2009. She expressed her ignorance that on 27.8.2009, a meeting for conciliation was fixed in the O/o Labour Inspector at Baddi. She denied that on 28.8.2009, the factory was closed due to the strike of the workers. She further denied that she was chargesheeted along-with other workers for instigating them to go on illegal strike and she was also a part of the same. She admitted that she was dismissed from service on the basis of chargesheet Ex. PW-1/B.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner along-with other workers were issued joint chargesheet dated 5.9.2009 and since the explanation submitted by the petitioner was not found satisfactory by the respondent, a domestic enquiry was ordered to be conducted and accordingly Mr. K. M Tripathi, Advocate was appointed as an enquiry officer to enquire into the charges leveled against them in respect of joint chargesheet. After the conclusion of enquiry, the enquiry officer had submitted his report dated 5.2.2010, Ex. RW-1/B. On the receipt of the enquiry report by the enquiry officer and after the satisfaction of the respondent that the charges leveled against the petitioner and other co-workers stood proved in the enquiry, the respondent concurred with the findings of the enquiry officer, as such the copy of the enquiry report alongwith show cause notice was issued to the petitioner and other co-workers to the proposed punishment of dismissal and

thereafter the petitioner along-with her co-workers were dismissed from the employment of the respondent company *vide* letter dated 27.3.2010. However, *vide* order dated 2.12.2015, this Court had set aside and quashed the enquiry conducted by the enquiry officer being violative of principles of natural justice and the respondent was afforded opportunity to lead evidence on merits in order to prove the misconduct as alleged in the chargesheet dated 5.9.2009 against the petitioner. At this stage, it would be pertinent to reproduce the joint chargesheet dated 5.9.2009 Ex. R-13 issued against the petitioner and other workers namely Mohan Lal, Surender Pal, Rakesh Kumar, Vikram, Nirmal Kumar, Ram Chand, Sandeep Kumar and Prithi Chand with respect to the alleged misconduct which is in Hindi and the same reads as under :

“आप पर आरोप है कि आप लोगों ने दिनांक 21-8-2009 को बिना सूचना एक साथ मिलकर तथा एक राय होकर लगभग 3 बजे अचानक काम रोक दिया और ठेकेदार के श्रमिकों को भी काम नहीं करने दिया जिसके लिए प्रबंधकों ने नोटिस भी जारी किया कि आप लोग “काम नहीं तो वेतन नहीं” के आधार पर उस अवधि के वेतन के अधिकारी नहीं है।

दिनांक 24-8-2009 को प्रबंधकों ने वेतन वृद्धि घोषित पत्र नोटिस बोर्ड पर लगाया गया।

आप सभी दिनांक 25-8-2009 को सुबह फैक्ट्री के अंदर आये परन्तु अपने कार्य स्थल पर नहीं पहुंचे। आप लोगों ने कार्य स्थल छोड़कर अन्य विभागों में जाकर श्रमिकों को काम न करने के लिए उकसाया एवं भड़काया। आप लोगों ने अपना कार्य शुरू नहीं किया। आप लोगों के उकसाने एवं भड़काने से अन्य श्रमिकों ने आप लोगों की अगुवाई में, फैक्ट्री के अंदर रहकर बिना सूचना अनुचित एवं गैरकानूनी हड़ताल की। प्रबंधकों के द्वारा आप लोगों को समझाया गया कि आप लोग श्रमिकों को अनुचित एवं गैरकानूनी हड़ताल के लिए न उकसायें और हड़ताल समाप्त कर काम पर वापस आयें क्योंकि इससे उत्पादन का भी नुकसान हो रहा है। प्रतिष्ठान की आर्थिक हालत पहले से खराब है लेकिन आप लोगों ने प्रबंधकों का कहना नहीं माना और आप सभी ने न केवल कम्पनी के श्रमिकों को बल्कि ठेकेदार के श्रमिकों को भी काम नहीं करने दिया। दोपहर के बाद आप लोगों ने उन श्रमिकों के साथ हाथापाई की जो फैक्ट्री में बना हुआ तैयार माल डिलीवरी के लिए ले जा रहे थे और आप लोगों ने तैयार माल फैक्ट्री से बाहर नहीं जाने दिया तथा धमकी दी कि जो भी माल बाहर लेकर जायेगा उसके हाथ पैर तोड़ देंगे। शाम को अपनी पाली समाप्त होने के बाद आप सभी फैक्ट्री गेट के पास अंदर ही इकट्ठे हो गए और कहा कि आप लोग फैक्ट्री नहीं चलने देंगे। आप लोगों के उग्र एवं विध्वंसक रवैये को देखते हुए पुलिस बुलानी पड़ी। पुलिस के आने के बाद आप लोग फैक्ट्री से बाहर गये।

आप लोगों के द्वारा एक साथ मिलकर एवं एक राय होकर दिनांक 25-8-2009 को किये गए दुराचरणों के लिए प्रबंधकों ने आपको, अपने पत्र दिनांक 25-8-2009 द्वारा कार्य से निलम्बित कर दिया। आप लोगों को निलम्बन आदेश दिनांक 26-8-2009 को सुबह लगभग 8.30 बजे फैक्ट्री गेट पर दिया गया। लेकिन आप लोगों ने निलम्बन आदेश पढ़ कर लेने से मना कर दिया। तदोपरान्त निलम्बन आदेशों को गेट पर लगा दिया गया। दिनांक 26-8-2009 को आप सभी निलम्बित श्रमिकों ने गेट पर दूसरे श्रमिकों को भी रोक लिया तथा धमकाया कि जो काम पर जाएगा उसके हाथ पैर तोड़ दिए जाएंगे, जिसके कारण कुछ श्रमिक जो कार्य पर जाना चाहते थे वे भी आप लोगों की धमकियों की वजह से कार्य पर नहीं गए।

प्रबंधकों द्वारा समस्त हड़ताली श्रमिकों को बार-बार समझाया गया परन्तु इसके बावजूद भी हड़ताली श्रमिक आप सभी के उकसाने व भड़काने पर हड़ताल समाप्त कर ड्यूटी पर उपस्थित नहीं हुए और वे इस बात पर अड़े रहे कि जब तक निलम्बित श्रमिकों का निलम्बन वापस नहीं लिए जाता कोई भी ड्यूटी पर नहीं जाएगा और हड़ताल जारी रहेगी। आप लोगों तथा एक अन्य निलम्बित श्रमिक श्री रघुवीर के साथ कुछ और श्रमिक भी दुराचरणों में लिप्त हुए। आप लोगों ने उपरोक्त दिनांक में यह भी धमकी दी कि आप लोग कम्पनी नहीं चलने देंगे, जो भी काम पर जाएगा उन्हें मारेंगे-पीटेंगे और देखते हैं कि कैसे फैक्ट्री से बाहर निकलते हैं।

दिनांक 27-8-2009 को संराधन कार्यवाही के दौरान आप सभी निलम्बित श्रमिकों ने संराधन कार्यवाही समाप्त होने के समय, कम्पनी के अधिकारी को जो संराधन कार्यवाही में हिस्सा लेने गए थे, धमकी दी कि उन्हें लेबर ऑफिस से बाहर नहीं जाने देंगे एवं उनकी गाड़ी भी तोड़ दी जायेगी। जिसकी सूचना पुलिस विभाग को भी दी गयी थी। आप लोगों के उकसाने व भड़काने से दिनांक 25-8-2009 को दोनों पालियों के श्रमिक हड़ताल पर रहे और दिनांक 26-8-2009 से फैक्ट्री के बाहर रहकर अपनी अनुचित एवं गैरकानूनी हड़ताल दिनांक 28-8-2009 तक जारी रखी। आप सभी के उपरोक्त कार्य गम्भीर दंडनीय दुराचरण है। आप को आदेश है कि आप इस आरोप पत्र की प्राप्ति के तीन दिन के अंदर उत्तर दें कि क्यों न आपके विरुद्ध अनुशासनात्मक कार्यवाही की जाए। अगर आपका उत्तर निर्धारित समय में प्राप्त नहीं हुआ तो यह समझा जाएगा कि आपको आरोप स्वीकार हैं तथा तदनुसार कार्यवाही की जायेगी।

मामले के अंतिम निपटारे तक आपका निलम्बन आदेश प्रभावी रहेगा।”

17. Now, the question which arises for consideration before this Court is as to whether the respondent has been able to prove the misconduct allegedly committed by the petitioner as per the aforesaid chargesheet. The first charge against the petitioner is that on 21.8.2009, at about 3.00 P.M., the petitioner along-with the other co-workers named in the chargesheet stopped the workers of the factory including the workers of the contractor from doing the work for which the management had also issued the notice to the workers that they would not be entitled for the wages for the period during which they had not worked on the principle of “no work no wage”. However, to prove the aforesaid charge, except for the statements of RW-1, RW-2 and RW-3, no other cogent and satisfactory evidence on record has been led by the respondent. Though, RW-1 has tendered in evidence notice dated 21.8.2009, Ex. R-2 but no reliance can be placed upon the same because a copy of the same has also been allegedly endorsed to the Labour Department but neither any record nor any witness from the Labour Department has been produced by the respondent in order to prove that this notice was also sent to the Labour Department. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. The petitioner has specifically denied in cross-examination that on 21.8.2009 at 3.00 P.M. the workers have stopped the work on their instigation. Neither any independent witness nor any worker of the factory or any worker of the contractor has been examined by the management to prove the aforesaid charge against the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charge has not been proved by the respondent against the petitioner.

18. The second charge against the petitioner and other co-workers named in the chargesheet is that on 25.8.2009, the petitioner along-with her associates named in the chargesheet instigated all the workers of the factory including the workers of the contractor to go on strike as a result of which all the workers went on illegal strike and also manhandled some of the workers and threatened them with dire consequences as a result of which the Police had to be called. To prove the aforesaid charge, the respondent had examined RW-1 to RW-3 but except for their bald statements, no other evidence has been led by the respondent to prove the aforesaid charge against the petitioner. Neither any independent witness nor any factory worker has been examined by the respondent in order to prove the aforesaid charge against the petitioner. Moreover, no worker of the contractor has been produced in the witness box. Though, the charge against the petitioner is that due to the illegal strike, the police had to be called, however, no record from the Police Station has been produced before this Court. RW-1 has admitted in cross-examination that they had not made any complaint to the Police that the workers had stopped the ingress of the vehicles on 25.8.2009 into the factory. RW-1 also stated in cross-examination that a complaint was made to the Police, however, for the reasons best known to the respondent neither any witness from the Police station has been examined nor any record from the Police station has been produced. RW-1 has also tendered in evidence complaint dated 25.8.2009 Ex. R-5 allegedly written to the SHO Police Station Barotiwala for police protection, however, there is nothing on record as to what had

happened thereafter and what action had been taken by the Police on the aforesaid complaint Ex. R-5. There is no evidence on record as to whether the Police had arrived at the factory and whether Police protection had been given on the complaint Ex. R-5. Similarly, RW-1 has tendered in evidence copy of complaint dated 25.8.2009 Ex. R-3 addressed to Labour Officer, Baddi regarding the illegal strike but no record from the office of Labour Officer Baddi has been produced before this Court. Therefore, in the absence of any record from the SHO Police Station Barotiwala and Labour Officer Baddi, no reliance can be placed upon the complaints Ex. R-3 & Ex. R-5. Hence, in the absence of any cogent and satisfactory evidence on record the aforesaid charge against the petitioner has also not been proved.

19. The next charge against the petitioner is that on 25.8.2009, the petitioner and other workers named in the chargesheet were suspended and on 26.8.2009 at 8.30 A.M. they refused to receive the suspension order and thereafter the copy of the same was pasted on the factory gate and on 26.8.2009 all the suspended workers have stopped the workers from doing the work. Further charge against the petitioner is that on 27.8.2009, after the conclusion of the conciliation proceedings the petitioner and other suspended workers had threatened the officials of the company who had attended the conciliation proceedings for which a complaint was also made to the Police. They have also been charged that due to their instigation, the workers of both the shifts remained on illegal strike on 25.8.2009 and they continued their strike *w.e.f.* 26.8.2009 to 28.8.2009. To prove the aforesaid charges, the respondent has examined RW-1 to RW-3, however, no cogent and satisfactory evidence has been led by the respondent to prove the aforesaid charges leveled against the petitioner and other workers named in the chargesheet. RW-1 stated in cross-examination that the respondent had made the complaint Ex. R-8 to the Labour Officer, Baddi regarding the illegal strike and also to the Labour Commissioner *vide* letter Ex. R-6, however, the respondent has failed to prove that the letter Ex. R-6 was sent to the Labour Commissioner. RW-1 admitted in cross-examination that the letter Ex. R-6 might have been sent through registered post but the postal receipt qua the same was not annexed. Though, RW-1 has stated that the letter Ex. R-8 was sent to the Labour Officer by hand but admittedly there is no endorsement/receipt of Labour Officer on the letter Ex. R-8. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the letters Ex. R-6 and Ex. R-8 regarding the illegal strike were received by the Labour Officer and Labour Commissioner respectively. Similarly, no witness from the Police Station Barotiwala has been examined and no record of Police Station Barotiwala has been produced before this Court in order to prove the letter Ex. R-7 written to the SHO Police Station Barotiwala regarding the illegal strike of the workers. There is also nothing on record to show that what action has been taken by the Police Station Barotiwala upon the letter Ex. R-7. RW-1 also admitted in cross-examination that they have not made any complaint to the Police regarding the threat given by the workers after the conciliation proceedings on 27.8.2009. Furthermore, RW-1 to RW-3 admitted in their cross-examination that the management had not received any complaint from the contractor regarding the stopping of work by the petitioner and other suspended workers. RW-2 also admitted that the other workers have not made any complaint in writing that they had been stopped by the petitioner for doing the work and to go on strike. Similarly, there is no evidence on record to suggest that during the period of alleged strike there was no production in the factory. RW-1 admitted that the respondent had not annexed any record of "no production" in the factory on 21.8.2009 and from 25.8.2009 to 27.8.2009. Though, RW-1 to RW-3 stated in cross-examination that they had deducted the wages of the workers for the period of strike but admittedly no record has been produced by the respondent regarding the deduction of wages during the period of strike and no record has been produced regarding the fact that the goods have not been delivered to the dealers during the period of strike. Neither any independent witness nor any worker has been examined to prove the aforesaid charge against the petitioner and other workers named in the chargesheet. Even, the contractor was not produced in the witness box in order to prove that his workers were stopped from doing the work by the petitioner and other workers named in the chargesheet. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to

conciliation and strike at Biogenetic Drugs was not found in their office. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charges against the petitioner and other workers named in the chargesheet have not been proved. Hence, I have no hesitation in holding that the respondent has failed to prove that due to the instigation of the petitioner and other workers named in the chargesheet, the workers went on illegal strike from 25.8.2009 to 28.9.2009 and had threatened the officials of the company

20. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the respondent has failed to prove the misconduct against the petitioner as alleged in the chargesheet dated 5.9.2009 Ex. R-13 issued by the respondent. Hence, the dismissal of the services of the petitioner on the basis of the aforesaid chargesheet is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue No. 3:

21. Since, I have held under issues No.1 & 2 above that the dismissal of the services of the petitioner by the respondent *w.e.f.* 27.3.2010 on the basis of chargesheet dated 5.9.2009 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Honble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that she was not gainfully employed after the dismissal of her services. The initial burden is on the workman/employee to show that she was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after her dismissal. The petitioner has failed to discharge her burden by placing any concrete material on record that she was not gainfully employed after her dismissal. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.3 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority

and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th day of May, 2018.

Sd/-
(SUSHIL KUKREJA)
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, H. P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 60 of 2007
Instituted on 28-7-2007
Decided on 14-5-2018

Rajinder Sharma s/o Late Shri Sehdev Sharma (now deceased). through

- A. Udesb s/o late Shri Rajinder Sharma,
- B. Bhupesh s/o late Shri Rajinder Sharma,
- C. Santosh w/o Late Shri Rajinder Sharma, all r/o Village Dharta, P.O. Sholi, Tehsil Rampur, District Shimla, H.P.

....*Petitioners*

Vs.

The Managing Director, Woodville Palace Resorts (P) Ltd., Woodville Palace, Raj Bhawan Raod, Shimla-2

....*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri T. K. Verma, Advocate *vice* Shri Rakesh Manta, Advocate

For respondent : Shri Rahul Mahajan, Advocate

AWARD

The following reference has been received from appropriate government for adjudication:—

“Whether the employee Shri Rajinder Sharma s/o Late Shri Sehdev Sharma is a workman or not and termination of his services by the Managing Director, Woodville Palace Resorts (P) Limited, Woodville Palace, Raj Bhawan Road, Shimla-2 w.e.f. 01.01.2004 without holding any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner Rajinder Sharma (since deceased) had filed the claim petition wherein it has been averred that he was engaged as Front Office Manager by the respondent in the year 1995

in his Hotel known as Woodville Palace on a salary of Rs. 3,000/- per month. Although, the petitioner was promoted as Assistant Manager in the year 2001 and was drawing Rs. 8,000/- per month + Rs. 2,000/- over time but the entire supervisory functions, affairs and management of the Hotel were being discharged by the respondent. The petitioner was only to obey the command of the employer. The services of the petitioner were terminated on 1.1.2004 without complying with the provisions of the Industrial Disputes Act, 1947. The petitioner was not paid salary for the period July 2003 to December, 2003. The petitioner was also not paid gratuity and medical expenses/miscellaneous expenditure etc. The petitioner was entitled to payment of salary to the tune of Rs. 4,32,000/-, over time allowances to the tune of Rs. 1,08,000/-, gratuity to the tune of Rs. 96,000/- and medical expenses/miscellaneous expenditure the tune of Rs. 90,000/- that is a total sum of Rs. 7,26,000/- alongwith interest @ of Rs. 18% per annum.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken regarding maintainability and that the petitioner is not a workman. On merits, it is stated that the petitioner was not workman and was working as Assistant General Manager drawing salary of Rs. 7,000/- per month with facility of free food, beverages and other perks. The petitioner was mainly performing the supervisory, managerial and administrative functions. The petitioner had been misappropriating the funds, that is, forging of kitchen order tickets, bills, cash and purchase. On acquiring knowledge of misappropriation, the respondent intended to lodge FIR but the petitioner as well as other workers of the Hotel requested the respondent not to lodge FIR and criminal case. Hence, the services of the petitioner came to be terminated on 1.1.2004 on dissuasion of the petitioner and workers not to lodge FIR against him. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

5. On the pleadings of the parties, following issues were framed by this Court on 19.12.2009:

- (1) Whether Shri Rajinder Sharma is a workman as alleged?*OPP*.
- (2) If issue No.1 is proved, whether the termination of services of petitioner by the MD Woodville Palace Resorts (P) Ltd., Shimla-2 *w.e.f* 1.1.2004 without holding any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified as alleged?*OPP*.
- (3) Relief

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:

Issue No.1 : Yes already decided by the Honble High Court

Issue No. 2 : No

Relief : Reference answered in favour of the LR's of the deceased petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. It may be pertinent to mention here that *vide* award dated 5.1.2012, this Court initially decided the issue no. 1 against the petitioner by holding that “the petitioner was performing supervisory, managerial and administrative functions in the respondent Hotel and was not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947” and answered the reference in negative. Thereafter, the petitioner had challenged the award passed by this Court before the Hon'ble High Court by filing CWP No. 1929 of 2012, which was decided by the Hon'ble High Court *vide* order dated 22.12.2017 by setting aside award dated 5.1.2012 passed by this Court by holding that the petitioner was a workman and thereafter the case was remanded back to this Court by holding as under :

“27. Even in the instant case, the petitioner may have been given a high sounding designation of Front Office Manager and thereafter as Assistant General Manager, but nonetheless it is apparent that none of the duties performed by him could be said to be either supervisory, managerial or administrative. The evidence led by the petitioner, as discussed above, even though oral, to claim that he was not discharging any supervisory, managerial or administrative duties, has not been successfully rebutted by the respondent and, therefore, the findings rendered by the learned Tribunal can conveniently be held to be perverse.

28. As observed earlier, the learned Tribunal has dismissed the claim petition of the original petitioner only on the ground that he was not a workman, whereas the issue No. 2 has not been decided because the same was dependent upon the findings on issue No. 1. However, since the findings on issue No. 1 have now been set-aside by this Court, the matter is required to be remitted back to the learned Tribunal for rendering findings on issue No. 2 not because that this Court is not competent to do so, but in case such exercise is undertaken by this Court that would obliterate one channel of appeal to the aggrieved party.

Therefore, this issue stands already decided by the Hon'ble High Court whereby it has been held that the petitioner was a workman.

Issue No. 2:

9. In order to prove issue No. 2, Shri Rajinder Sharma (now deceased) appeared into the witness box as PW-1 and deposed that he was engaged as Front Office Manager by the respondent in 1995 at the monthly salary of ₹ 3000/- with enhancement from time to time and then he was promoted as Assistant Manager in 2001 at the monthly salary of ₹ 8000/- besides ₹ 2000/- for over time. He further deposed that he used to work with the respondent from 8.00 A.M. to 12.00 P.M. and he did not discharge any supervisory function with regard to the affairs and management of the Hotel and he used to obey the command of his employer. He also deposed that he worked with the respondent till 1.1.2004 and thereafter his services were terminated orally by the respondent without any notice and compensation. He deposed that he had completed 240 days in every calendar year preceding his termination and he was not paid the salary from July 2003 to December 2003 which was demanded by him from time to time. He also tendered in evidence demand notice Ex. PA. He further deposed that he was also entitled to medical reimbursement, gratuity and EPF, salary from July 2003 to December 2007 @ 8000/- to the tune of ₹ 4,32,000/-, over time salary @ 2000/- per month amounting to ₹ 1,08,000/-, gratuity *w.e.f.* 1995 till date ₹ 96,000/-, medical expenses ₹ 90,000/- which comes to ₹ 7,26,000/-. He also tendered in evidence the medical

certificates mark X1 to mark X-8. In cross-examination, he admitted that when his services were terminated he was working as an Assistant General Manager in the Hotel. He denied that when his services were terminated he used to get ₹ 7000/- as salary + free food. He further denied that Sant Ram Bhardwaj, Accountant had detected misappropriation on his part in respect of preparing false kitchen order tickets and pocketing the amount after collecting from the guests. He further denied that he (Sant Ram Bhardwaj) had also detected that against actual LPG cylinders taken from the Hotel, he had been showing more to have been purchased/taken from Khans. He also denied that he had been pocketing the commission of Khans. He denied that mark RA was his termination letter which was also sent to him and Labour Officer. He admitted that the prescriptions mark X1 to X8 are after 1.1.2004. He further admitted that regarding having spent ₹ 90,000/- on medicines, he had not placed on record any document. He denied that he had been paid the salary for the months of July 2003 upto December 2003.

10. On the other hand, the respondent examined three RWs. RW-1 Shri Vijay Sharma, General Manager of the Hotel has stated that *vide* authority letter Ex. RA, he has been authorized to make the statement before this Court. He further stated that the petitioner was initially appointed as Front Office Manager and thereafter promoted as Assistant General Manager and the duty of the petitioner was to supervise, manage and to look-after all the departments in the hotel of respondent and he used to be paid ₹ 7000/- per month+ free food as on 31.12.2003. He also stated that the petitioner had been misappropriating the funds of the Hotel and further he also used to embezzle the amount by showing that the commission has been paid to Kashmiri coolies in respect of walking guests when no commission has been made which acts of omissions and commissions have been detected by Sant Ram Bhardwaj, Accountant and thereafter *vide* Ex. RB, the services of the petitioner have been terminated. He also identified the signatures of the petitioner on Ex. RC and Ex. RD. In cross-examination, he admitted that at the time of initial engagement of the petitioner as Front Office Manager, his salary was ₹ 3000/- per month subject to the periodical enhancement. He denied that as the petitioner demanded salary for the months of July 2003 to December 2003, so they terminated his services. He further denied that they have not paid the gratuity to the petitioner.

11. Shri Sant Ram Bhardwaj, Accountant appeared into the witness box as RW-2 to depose that he detected the petitioner misappropriating the funds of Wood Ville hotel by cutting kitchen order tickets and making bill vouchers and later on bill vouchers used to be cancelled after taking the cash. He further deposed that the petitioner used to purchase gas cylinder from Kashmiri coolies by showing 4-5 cylinders having been purchased but actually purchased 2-3 cylinders by doing so the petitioner used to embezzle the amount and he also used to embezzle the amount by showing that the commission has been paid to kashmiri coolies in respect of walking guests when no commission had been made. In cross-examination, he admitted that in writing he had not reported to the GM regarding alleged irregularities/embezzlement etc.

12. RW-3 Shri Man Singh, Chef of respondent hotel has stated that the department of kitchen was under the supervision and control of petitioner who used to give directions to the kitchen staff and other staff in the hotel. He identified his signatures on Ex. RB at point E. In cross-examination, he denied that the petitioner had not committed any embezzlement and that Ex. PB has been prepared falsely. He admitted that the petitioner was the employee of the hotel and used to get salary.

13. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner Rajinder Sharma (since deceased) was appointed as Front Office Manager by the respondent in the year 1995 and thereafter he was promoted as Assistant General Manager and his services were terminated *w.e.f.* 1.1.2004. The case of the respondent is that the services of the petitioner were terminated as he had been misappropriating the funds/money of the respondent hotel as he had been cutting the kitchen order tickets and thus

making bills vouchers and collecting money in cash from the hotel's clients and later on these vouchers, bills used to be cancelled on computer and cash kept for his use. The further case of the respondent is that the petitioner was also purchasing gas cylinders from Kashmiri Coolies by showing 4-5 cylinders having been purchased but actually purchasing 2-3 cylinders only and thus embezzling the price of cylinders not purchased and he also used to embezzle the amount by showing that commission has been paid to the Kashmiri coolies in respect of walk-in hotel guests when in fact no commission was paid to coolies and in fact fake bills were made by the petitioner. From the perusal of the record it has become clear that the services of the petitioner were terminated without holding any enquiry. Now, the question which arises for consideration before this Court is as to whether the action of the respondent was illegal and unjustified in terminating the services of the deceased petitioner without holding any domestic enquiry and without following the principles of natural justice on account of the aforesaid misconduct. It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent.

In D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221, the Hon'ble Apex Court has held as under:

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In a judgment given by our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

“8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9.....

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11.....

12.....

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

However, in the instant case, admittedly, neither any show cause notice nor any chargesheet was issued to the deceased petitioner before terminating him from service. No explanation was called for from him and no domestic enquiry was conducted against him to ascertain the charges and to

provide the opportunity of being heard to him in flagrant violation of the principles of natural justice. The petitioner had worked continuously with the respondent from the year 1995 till 1.1.2004 and had completed 240 days in each calendar year and in preceding 12 months before his termination. Therefore, it was incumbent upon the respondent to have conducted the enquiry against the petitioner prior to his termination. However, no enquiry was held before terminating his services on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice.

14. There can be no doubt about the fact that the respondent was entitled to lead evidence on merits before this Court to prove the alleged misconduct of the deceased petitioner in case his dismissal was found to be in violation of the principles of natural justice. However, no cogent and satisfactory evidence has been led by the respondent before this Court to prove the alleged misconduct against the deceased petitioner. Except for the oral statements of RW-1 to RW-3, there is no evidence on record to suggest that the deceased petitioner had been misappropriating the funds of the hotel. In fact no record has been produced by the respondent before this Court in order to prove the alleged mis-appropriation of the hotel funds by the deceased petitioner. Therefore, in the absence of any documentary evidence on record, no reliance can be placed upon the oral testimony of RW-1 to RW-3 regarding the alleged mis-appropriation of the hotel funds by the deceased petitioner. Hence, in the absence of any cogent and satisfactory evidence on record, the respondent has failed to prove the alleged mis-conduct of the deceased petitioner before this Court.

15. As observed earlier, it is not disputed that the deceased petitioner had worked with the respondent hotel *w.e.f.* the year 1995 till 1.1.2004 meaning thereby that he had completed 240 working days with the respondent in each calendar year and in preceding twelve calendar months from the date of his termination. It is also clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the deceased petitioner nor he was paid compensation in lieu thereof. Therefore, before terminating the services of the deceased petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd. Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

“34.The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

16. In the instant case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the deceased petitioner. Hence, in view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the deceased

petitioner *w.e.f.* 1.1.2004 by the respondent without complying with the provisions of section 25-F of the Act, is improper and unjustified.

17. In his claim petition, the deceased petitioner has alleged that his salary during the period *w.e.f.* July 2003 to December 2003 has not been paid to him and he has also not been paid the over time salary and medical expenses. However, except for the oral statement of the deceased petitioner, there is no other evidence to suggest that he was not paid the salary during the period from July 2003 to December 2003, over time salary and medical expenses. In cross-examination, the deceased petitioner had admitted that regarding the medical expenses in the sum of ₹ 90,000/- he had not placed on record any document. He further admitted that the prescription slips mark X-1 to mark X-8 are after 1.1.2004 *i.e.* after the date of his termination. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the deceased petitioner was not paid the salary during the period from July 2003 to December 2003, over time salary and medical expenses.

18. It is a matter of record that the petitioner Rajinder Kumar died on 26.5.2017 and his LR's have been brought on record. Now, the question which arises for consideration, before this Court is as to what benefits the LR's of deceased petitioner are entitled to. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon 'ble Supreme Court** has held that:

“It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

In the present case since the termination of the services of the deceased petitioner is held to be illegal and unjustified and he died during the pendency of the present reference, therefore in such a situation compensation to his LR's in lieu of his reinstatement and back-wages may be appropriate. Hence, taking into account all facts and circumstances of the present case, ends of justice would be met, if the lump sum compensation is awarded to the LR's of deceased petitioner.

19. It is not disputed that the deceased petitioner was the regular and confirmed employee of the respondent hotel and his service was of permanent character. Therefore, in my view the LR's of deceased petitioner are entitled to receive a suitable, appropriate, just and equitable compensation from the respondent and it would be quite reasonable and justified if lump sum compensation in the sum of ₹ 3,00,000/- (Rs. Three lakhs only) is awarded to the LR's of deceased petitioner. Consequently, this issue is decided against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the deceased petitioner is partly allowed and as such the respondent is directed to pay ₹ 3,00,000/- (Rs. Three lakhs only) as lump sum compensation to the LR's of the deceased petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The petitioner Mrs. Santosh who is the widow of deceased shall be paid a sum of ₹ 2,00,000/- (Rs. Two lakhs only) and petitioners Udesb and Bhupesh who are the sons of deceased shall be paid a sum of ₹ 50,000/- (Rs. Fifty Thousand only) each. The reference is answered

accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open court today on this 14th day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA (H.P.)**

Application No. 48 of 2014

Instituted on. 3-6-2014

Decided on 29-5-2018

Bhupinder Gautam s/o Shri Shiv Prasad Gautam, r/o Ward No. 5, Nalagarh, District Solan,
H.P. *...Petitioner.*

Vs.

1. HP State Civil Corporation, Ward No. 6, Shitla Mata Mandir, Nalagarh, District Solan, H.P.
2. The Managing Director, HP State Civil Corporation Kasumpti, Shimla-9, H.P.
3. The Area Manger, HP State Civil Supplies Corporation, Solan, District Solan, H.P.
...Respondents.

Petition under section 2-A of the Industrial Disputes Act.

For petitioner : Shri Balwant Thakur, Advocate
For respondent: Shri Rajesh Thakur, Advocate

AWARD/ORDER

Briefly, the case of the petitioner is that on 1.1.2006, he was engaged as data entry operator by the respondent No.1 and had completed more than 240 days in the each calendar year. It is further stated that the petitioner had discharged his duty to the utmost satisfaction of his superior during the aforesaid working tenure and had never given any opportunity of complaint with respect to his work and nothing adverse was found against him but on 13.11.2012, his services were terminated orally without adopting the legal procedure established by law. It is also stated that after the termination from service, the petitioner had requested twice to the HPSCSC, Nalagarh by writing letters but no positive response has been given by the respondents and thereafter on 19.1.2013, he had raised the demand notice under section 2A of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) but the conciliation was not matured due to the adamant behaviour of the respondents. Against this back- drop a prayer has been made that the petitioner be reinstated in service with all service benefits along-with back-wages, seniority etc.

2. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken regarding maintainability, estoppel, that there is no relation between the employer and the employee between the petitioner and respondents and suppression of material facts. On merits, it has been denied that the petitioner was working as a workman and had worked for more than 240 days in each calendar year. It is further denied that the petitioner was employed by the respondents. The respondents prayed for the dismissal of the claim petition.

3. By filing rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed the averments of the petition.

4. On the pleadings of the parties, following issues were framed by this Court on 2.3.2016:

- (1) Whether the termination of the services of the petitioner *w.e.f.* 13.11.2012 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged?*OPP.*
- (2) If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ...*OPP.*
- (3) Whether the petition is not maintainable as alleged? ...*OPRs.*
- (4) Whether the petitioner is estopped from filing this petition due to his own act and conduct? ...*OPRs.*
- (5) Whether the petitioner has suppressed material facts from this Court as alleged? ...*OPRs.*
- (6) Relief.

5. I have heard the learned counsel for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 :	No
Issue No. 2 :	Becomes redundant
Issue No. 3 :	Not pressed
Issue No. 4 :	No
Issue No. 5 :	No
Relief :	Application dismissed per operative part of order

REASONS FOR FINDINGS

Issues No. 1:

7. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondents illegally without complying with the provisions of the Act.

8. On the other hand, the case of the respondents is that the services of the petitioner were never engaged by the respondents, hence, the question of his termination does not arise at all.

9. To prove his case, the petitioner examined four PWs. The petitioner stepped into the witness box as PW-1 to depose that he was engaged in the year, 2006 by the Area Manager, Solan as Data Entry Operator at Nalagarh Gas Agency and he had worked till November, 2012. He further deposed that during his working tenure, he had worked continuously without any break or any holiday and his work was up to the satisfaction of his superiors. He tendered in evidence certificates Ex. PW-1/A-1 to Ex. PW-1/C and deposed that before the termination of his services, no notice and compensation was paid to him and thereafter he wrote a letter Ex. PW-1/D to Area Manager, Solan for his re-instatement. He also deposed that he raised demand notice Ex. PW-1/E and the conciliation proceedings took place and a notice Ex. PW-1/F was issued to him. He also tendered in evidence letter dated 25.4.2013 Ex. PW-1/G, salary certificate Ex. PW-1/H, letter Ex. PW-1/J and training certificate Ex. PW-1/K. In cross-examination, he denied that he was engaged by Shri H.S. Rana who was the incharge of LPG Gas Agency at Nalagarh. He further denied that he had collected the certificates after he was terminated from service.

10. PW-2 Shri Vikram Singh, Area Manager has stated that as per record, experience certificate Ex. PW-1/A has not been issued by their office and at LPG Gas Agency, Nalagarh a clerk-cum-data entry operator has been employed. In cross-examination, he stated that clerk-cum-data entry operators are employed through H.P. Subordinate Service Commission, Hamirpur. PW-3 Shri Lekh Ram, Telephone Technician, BSNL Solan stepped into the witness box to depose that the petitioner has received a SIM Card from their office at Nalagarh under the Government Plan and the mobile bill issued to the petitioner is mark P-1. PW-4 Shri Hari Singh, Sales Supervisor deposed that he remained posted at Nalagarh as incharge from August, 1998 till the year, 2016 and the petitioner had never worked as a data operator at Nalagarh as there is no post of data operator at Nalagarh. He further deposed that the petitioner used to come to their office off and on as his house was situated nearby but he had never worked in their office.

11. Before, I proceed further, it is important to mention here that after examining four PWs, the petitioner has failed to produce remaining evidence despite having been availed several opportunities, hence, *vide* order dated 3.4.2018, the evidence of the petitioner was ordered to be closed by the order of this Court on which date *vide* separate statement the learned counsel for the respondents stated that he did not want to lead any evidence on behalf of respondents and closed the evidence on behalf of respondents.

12. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner has failed to prove that he was the employee of the respondents as no appointment letter has been produced by him to prove that he was engaged by the respondents. In cross-examination, the petitioner has admitted that no appointment letter was issued to him by the respondents. The petitioner has placed reliance upon the experience certificate Ex. PW-1/A, salary certificate Ex. PW-1/H and letter Ex. PW-1/J. However, no benefit can be derived by the petitioner from the aforesaid documents as all these documents have been issued by Shri H.S. Rana, the Incharge of the LPG Gas Agency at Nalagarh, as admitted by the petitioner in his cross-examination but the petitioner has failed to produce Shri H.S. Rana in the witness box in order to prove all these documents. Moreover, PW- 2, the official from the office of Area Manager, Solan has stated that as per the record the experience certificate Ex. PW-1/A has not been issued by their office. He also admitted in cross-examination that the clerk-cum-data entry operators are employed through H.P. Subordinate Service Commission, Hamirpur. The petitioner has also failed to produce the person in the witness box who had issued him the documents Ex. PW-1/B, Ex. PW-1/C and Ex. PW-1/K. In fact no satisfactory evidence has been led by the petitioner to show that there was an employee and employer relationship between the petitioner and

the respondents. Moreover, PW-4 also deposed that the petitioner had never worked as a data entry operator at Nalagarh and there is no post of data entry operator at Nalagarh. He further deposed that the petitioner used to come to their office off and on as his house was situated nearby but he had never worked in their office and at present a clerk posted at Nalagarh is working as data operator. The onus was upon the petitioner to prove by leading satisfactory and cogent evidence on record that he was the employee of the respondents, however, no cogent and satisfactory evidence has been led by the petitioner to prove that he was the employee of the respondents.

13. The further case of the petitioner is that he had completed 240 days in each calendar year and in twelve calendar months preceding his termination but in support thereof he has failed to place on record any documentary evidence which could go to show that the petitioner had completed 240 days in each calendar year and in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in each calendar year and in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in each calendar year and in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

14. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 13.11.2012 by the respondents without complying with the provisions of the Act is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondents and against the petitioner.

Issue No. 2 :

15. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue No. 3 :

16. During the course of arguments, this issue was not pressed by the learned counsel for the respondents, hence, the same is decided in favour of the petitioner and against the respondents.

Issue No. 4 & 5 :

17. In support of these issues no evidence has been led by the respondents. Hence, in the absence of any evidence on record both these issues are decided in favour of the petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner fails and is hereby dismissed. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

App. No. 48 of 2012

Instituted on 1-10-2012

Decided on 15-5-2018

Pardeep Kumar s/o Shri Krishan Kumar c/o Narata Ram, r/o Village Khadeen (Kamli)
Parwanoo, Tehsil Kasauli, District Solan, H.P. *...Petitioner.*

Vs.

Factory Manager, M/s Anuspaa Heritage Products Pvt. Ltd., Plot No. 3 Khadeen (Kamli)
Parwanoo, Tehsil Kasauli, District Solan, H.P. *....Respondent.*

Claim petition on behalf of the petitioner

For petitioner	:	Shri Nirnajan Verma, Advocate
For respondent	:	Shri R.K. Khidta, Advocate

AWARD/ORDER

In nutshell the case of the petitioner is that in November, 2009, he was appointed as an operator by the respondent company and was getting monthly salary of ₹ 3800/- and he worked till 28.2.2011 to the entire satisfaction of the respondent. It is further stated that he had completed 240

days in a calendar year/preceding year as per section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). The management of the respondent was not providing any leave and remuneration for over-time as per prevalent rates and on demand of leave and over time the respondent got annoyed and terminated him from service *w.e.f.* 1.3.2011 without issuing any notice, chargesheet and without conducting any enquiry. It is also stated that the petitioner had filed the demand notice dated 20.5.2011 upon which the Labour and Conciliation Officer had convened many conciliation meetings but till date nothing has come out. That the respondent had not paid the benefits and dues such as bonus, salary, gratuity, earned leave, over time and other benefits under Labour Laws till date for which he is entitled and that the juniors to the petitioner were retained. Against this back-drop a prayer has been made that the petition be answered in favour of the workman by holding his retrenchment improper and unjustified and he (petitioner) be entitled to all service benefits including back- wages, gratuity, bonus, over time and seniority in service.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, abandonment of job by the petitioner and suppression of material facts from this Court. On merits, it has been asserted that the petitioner worked as helper *w.e.f.* 1.7.2010 to 28.2.2011 and thereafter he had left the job at his own and his services were never terminated by the respondent and even the petitioner was given number of notices regarding his absence from the duty but despite receiving the notices, the petitioner failed to join his duties. It is further asserted that since the petitioner has left the job at his own, hence, the question of completing 240 days has no meaning in the eyes of law. That the petitioner was given CL and SL as per the requirement and his entitlement and he had been working only for eight hours daily for which he had been paid wages as per the Act and he never performed his over time duties. It is denied that the services of the petitioner were terminated *w.e.f.* 1.3.2011 without issuing any notice, chargesheet, conducting enquiry and without complying the mandatory provisions of the Act. It is further asserted that the entire payment till 28.2.2011 and the bonus for the year, 2010-2011 stands already paid to the petitioner and he was not entitled for any gratuity as he had not completed five years of continuous service. The respondent prayed for the dismissal of the claim petition.

3. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 8.11.2016.

- (1) Whether the termination of the services of the petitioner *w.e.f.* 1.3.2011 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...OPP.
- (2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled?OPP.
- (3) Whether the present petition is not maintainable as alleged? ...OPR.
- (4) Relief.

4. I have heard the learned counsel for the parties and have also gone through the record of the case.

5. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

Issue No.1 Yes.

Issue No. 2 Entitled to reinstatement with seniority and continuity but without back-wages.

Issue No. 3 No.

Relief. Application allowed per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

6. The learned counsel for the petitioner contended that the petitioner had completed 240 days in each calendar year and his services had been terminated by the respondent illegally without complying with the provisions of section 25-F of the Act. He further contended that junior person to the petitioner were retained by the respondent in violation of the provisions of section 25-G of the Act.

7. On the other hand, learned counsel for the respondent contended that the services of the petitioner were never terminated by the respondent who himself had abandoned his job without any intimation. He further contended that the respondent had issued number of notices regarding the absence of the petitioner but despite receiving the notices, the petitioner had failed to join his duties.

8. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as an operator by the respondent on 4.11.2009 and worked till 28.2.2011 on a monthly salary of ₹ 3800/-. He further stated that he had completed 240 days in each calendar year and when he asked for his due leaves and over time charges, the respondent management got annoyed with him and terminated his services. He also stated that neither any notice/chargesheet was issued to him nor any enquiry was held against him. He tendered in evidence the copy of demand notice dated 20.5.2011 Ex. PW-1/A, copy of application written by him to Labour Inspector-cum-Conciliation Officer Ex. PW-1/B and certificate issued by the respondent Ex. PW-1/C. In cross-examination, he denied that he was engaged on 1.7.2010 and worked till 28.2.2011. He admitted that he had not received any letter of termination from the respondent. He denied that he had left the job at his own on 1.3.2011. He further denied that notices mark R-1 to mark R-5 were issued to him by the respondent after he left the job. He denied that in the company attendance register, he was marked absent *w.e.f.* April, 2011 to July, 2011. He further denied that he had not done any over time work.

9. On the other hand, the respondent has examined RW-1 Ms. Aruna Sharma, HR Executive who tendered in evidence her affidavit Ex. RW-1/A wherein she reiterated almost all the averments as made in the reply. She also tendered in evidence authority letter Ex. RW-1/B, copies of attendance register for the month of March to July, 2011 Ex. RW-1/C-1 to Ex. RW-1/C-5. In cross-examination, she denied that the petitioner was engaged *w.e.f.* November, 2009. She admitted that Ex. PW-1/C was issued by the respondent company. She denied that the petitioner had completed 240 days in preceding 12 months. She further denied that the services of the petitioner were illegally terminated. She also denied that the legal dues of the petitioner were not paid. She denied that the demand notice Ex. PW-1/A was served upon the respondent. She admitted that no enquiry was conducted against the petitioner.

10. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as an operator and he had worked with the respondent *w.e.f.* 4.11.2009 till 28.2.2011. The case of the respondent is that the services of the petitioner had been engaged *w.e.f.* 1.7.2010 and he worked as such till 28.2.2011 but when regard is given to the certificate Ex. PW-1/C, it has become clear that the services of the petitioner had been engaged *w.e.f.* 4.11.2009. RW-1, Ms. Aruna Sharma, HR Executive with respondent has admitted

in cross-examination that Ex. PW-1/C was issued by the respondent company. Therefore, from the admission of RW-1, it is clear that the services of the petitioner were engaged *w.e.f.* 4.11.2009. The case of the petitioner is that his services were terminated without complying with the provisions of the Act and neither any chargesheet was issued to him nor any enquiry was conducted against him whereas the case of the respondent is that the petitioner had abandoned the job at his own and stopped attending his duties. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. The relevant portion of the aforesaid judgment is reproduced as under:

“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.

In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”

It is also well settled that once, it is admitted that the workman had been in service of the management, the burden of proving that he himself abandoned the job lies on the management as has been held by the Hon'ble Supreme Court in **M/s Nicks (India) Tools Vs. Ram Surat reported in 2004 (103) FLR 102**. Thus, voluntarily abandonment of job can only be proved by the respondent/management by bringing on record evidence of absence of employee alongwith his intention not to join back. In cross-examination of PW-1, the learned counsel for the respondent had put to the petitioner, the notices Mark R-1 to Mark R-5 regarding his absence from duty which the petitioner had denied. However, no credence can be attached to the aforesaid notices Mark R-1 and Mark R-2 as the person who had issued the notice Mark R-1 dated 8.3.2011 and notice dated 4.4.2011 Mark R-2, has not appeared in the witness box. Similarly, no credence can be attached to the notices Mark R-3 to Mark R-5 as the same are only the photocopies and the originals of the same had not been produced on record by the respondent. Moreover, there is no evidence on record to suggest that the aforesaid notices have been received by the petitioner and despite receiving the same, the petitioner had failed to join his duties. Though, in her evidence by way of affidavit Ex. RW-1/A, RW-1 deposed that number of notices regarding his absence from duty were issued to the petitioner but despite receiving the notices, the petitioner had failed to join the duties. However, in her statement as RW-1, she had failed to prove that the aforesaid notices Mark R-1 to Mark R-5 were issued by the respondent. RW-1 has also tendered in evidence the attendance register for the months of March to July, 2011 Ex. RW-1/C-1 to Ex. RW-1/C-11 in order to prove that the petitioner remained absent from duties. However, no benefit can be derived from the aforesaid attendance register as inference cannot be drawn that the petitioner had abandoned the job merely by absenting from duties unless the respondent proves by way of cogent and satisfactory evidence on record the intention attributed to the petitioner not to join back the duties. Therefore, in the absence of any cogent and satisfactory evidence on record it cannot be said that the petitioner had voluntarily abandoned the job at his own.

11. It is the admitted case of the respondent that the petitioner had worked with the respondent from 1.7.2010 till 28.2.2011 which clearly shows that the petitioner had completed more than 240 days in the preceding twelve months prior to his termination. It is not in dispute that neither any notice had been issued to the petitioner nor he was paid any compensation. Therefore, before terminating the services of the petitioner it was incumbent upon the respondent to have complied with section 25-F of the Act which lays down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

“34.**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.**”

12. In the present case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, in view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without complying with the provisions of section 25-F of the Act is illegal and unjustified.

13. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 2:

14. Since I have held under issue No.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

15. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

16. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

17. In the present case there is no evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. There is no evidence on record to suggest that the petitioner had worked over time and had not been paid the over-time wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No. 3 :

18. In support of this issue, no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 15th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court,
Shimla.

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA**

Ref. No. 109 of 2016
Instituted on 2-11-2016
Decided on 19-5-2018

Piar Chand s/o Shri Pratap Chand r/o Village Chail, P.O. Rouri Subathu, Tehsil & District
Solani
...Petitioner.

Vs.

The Executive Engineer, Division No.1, HPSEB Charlie Villa, Chotta Shimla-2, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : None.

For respondent : Shri Yogesh Kumar, Advocate vice csl.

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether alleged termination of services of Shri Piar Chand S/o Shri Partap Chand R/o Village Chail, P.O. Rouri, Subathu Road Dharampur, District Solan, HP during May, 1998 by the Executive Engineer, HPSEB Division Charlie Villa, Chotta Shimla-2 who had worked as beldar on daily wages only for 28, 91 and 51 days during 1996, 1997 and 1998 respectively and raised his industrial dispute after about 17 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the working period of 28, 91 and 51 days during 1996, 1997 and 1998 respectively and delay of about 17 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that he had worked as beldar with the respondent *w.e.f.* 1.1.1996 till December, 1998 and his services were terminated without assigning any reason and without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) and after his termination he requested for his reengagement but of no avail. It has further been stated that the petitioner had completed more than 240 days in each calendar year and his juniors/fresh hands are still working with the respondent. Against this back-drop it has been prayed that the petitioner be reinstated in service with seniority and continuity along-with back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein various preliminary objections including that the claim petition is bad on account of non-joinder and mis-joinder of necessary parties, maintainability, estoppel etc. have been taken. On merits, it has been asserted that the petitioner was engaged as daily waged beldar for specific work who had worked for brief spells since 4.12.1996 to 25.5.1998 for a period of 73 days only and thereafter he had left the job at his own, hence, there is no violation of sections 25-B, 25-F, 25-G and 25-H of the Act. It is denied that the petitioner had requested for his reengagement. It is further asserted that the petitioner had not completed 240 days in any calendar year and no junior persons were engaged by the respondent except those who have been engaged on specific judicial order of competent Court. The respondent prayed for the dismissal of the claim petition.

4. In rejoinder, the petitioner reiterated his allegations as made in the claim petition by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed by this Court on 20.5.2017.

- (1) Whether the termination of the services of the petitioner during May, 1998 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified? ...*OPP*.
- (2) If issue No.1 is proved in affirmative to what relief of service benefits the petitioner is entitled? ...*OPP*.
- (3) Whether the petition is not maintainable as alleged? ...*OPR*.
- (4) Whether the petition is hit by delay and laches as alleged? ...*OPR*.
- (5) Relief.

6. I have heard the learned counsel for the respondent and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1:	No.
Issue No. 2:	Becomes redundant.
Issue No. 3:	No.
Issue No. 4:	Not pressed.
Relief :	Reference answered against the petitioner per operative part of award.

8. It may be pertinent to mention here that the petitioner failed to appear in the witness box and *vide* order dated 10.1.2018, the evidence of the petitioner was closed by the order of the Court and the case was fixed for the evidence of the respondent but on 18.4.2018, the learned counsel for the petitioner pleaded “no instructions” and on 20.4.2018, he had filed an application for withdrawal of power of attorney on behalf of the petitioner which was allowed and thereafter this Court again issued fresh notice to the petitioner and the case was fixed for 19.5.2018 for the service of the petitioner but despite having been duly served, the petitioner had failed to appear before this Court. Therefore, this Court is left with no other option but to proceed to decide the reference on the basis of material available on record.

REASONS FOR FINDINGS

Issues No. 1:

9. From the perusal of the terms of reference, it has become clear that the petitioner has raised his dispute after about 17 years and remained silent during this period without any plausible explanation. The case of the petitioner is that he was engaged as beldar on 1.1.1996 and had worked continuously till December, 1998 whereas the case of the respondent is that the petitioner had worked for brief spells since 4.12.1996 to 25.5.1998 for a period of 73 days only. From the perusal of the mandays chart filed by the respondent along-with reply, it has become clear that the petitioner had worked for 21 days in the year, 1996, 25 days in the year, 1997 and 27 days in the

year, 1998 and had worked for a total period of 73 days. There is no material on record which could show that the petitioner had completed 240 days in each calendar year and in twelve calendar months preceding his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to examine himself or any other witness/es to and also failed to place any material on record to prove that he had put in 240 days in each calendar year and in twelve calendar months preceding his termination. There is no iota of evidence which could go to show that the petitioner had completed 240 working days in each calendar year and in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Act as such no protection of section 25-F of the Act can be granted to the petitioner.

10. The further case of the petitioner is that the respondent had retained his juniors and engaged fresh hands who are still working as such the respondent had violated the principles of “last come first go”. In support of his case, the petitioner examined one Shri Partap Singh, Assistant Executive Engineer, as PW-1 who deposed that as per the record Molak Ram was engaged on 26.6.1993, Devi Ram was engaged on 4.9.1992 and Mohinder Singh was engaged on 3.9.1992. He further deposed that Dhan Bahadur, Prem Chand, Narinder Singh, Om Parkash, Bhim Sen and Prem Singh never worked with Electrical Division no.1, Khalini Shimla. However, no cogent and satisfactory evidence has been led by the petitioner to prove that his juniors had been retained and fresh hands have been engaged. Even, from the statement of PW-1 no benefit can be derived by the petitioner as PW-1 has stated in cross-examination that the petitioner was engaged as beldar on 4.12.1996 and he worked only for 73 days with the respondent and Molak Ram, Devi Ram and Mohinder Singh are seniors to the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record, no protection of sections 25-G and 25-H can be granted to the petitioner.

11. Hence, in view of the entire evidence on record, it cannot be said that the termination of the services of the petitioner during May, 1998 without complying with the provisions of the Act is illegal and unjustified. Accordingly, issue No. 1 is decided in favour of the respondent and against the petitioner.

Issue No. 2:

12. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue No. 3:

13. The present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 4:

14. During the course of arguments, this issue was not pressed by the respondent, hence, the same is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my aforesaid discussion on issues no. 1 to 4 above, the claim filed by the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondent and against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 19th day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
H.P. Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 16 of 2015

Instituted on 11-5-2015

Decided on 31-5-2018

Ashwani Kumar s/o Shri Baldev Singh, Village Painkufar, P.O. Taproli, Tehsil Rajgarh, Distt. Sirmaur, H.P. Through Shri J.C. Bhardwaj, President HP-AITUC, HQ Saproon, Solan, H.P.
..Petitioner.

Vs.

1. Managing Committee, Green Hills Engineering College Society, Gandhi Gram, P.O. Bohali, Tehsil and Distt. Solan, H.P. through its Chairman.

2. Green Hills Polytechnic, Green Hills Engineering College Society, Gandhi Gram, P.O. Bohali, Tehsil and Distt. Solan, H.P. Through its Principal
...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, AR.

For respondents : Shri Vishal Panwar, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:—

“Whether termination of the services of Shri Ashwani Kumar s/o Shri Baldev Singh, r/o Village Painkufar, P.O. Taproli, Tehsil Rajgarh, Distt. Solan, H.P. by (i) The Chairman, Managing Committee, Green Hills Engineering Collage Society, Gandhi Gram, P.O. Bohali, Tehsil & Distt. Solan, H.P. & (ii) The Principal, Green Hills Polytechnic, Green Hills Engineering College Society, Gandhi Gram, P.O. Bohali, Tehsil & Distt. Solan, H.P. vide letter dated 29.8.2013 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the employers(s)/university?”

2. In nutshell the case of the petitioner is that during the month of May, 2007, the petitioner joined the services of the respondents as a clerk and his services were terminated on 29.8.2013 vide letter dated 29.8.2013 and he drew his last wages @ ₹ 8851/- per month. It is further stated that the petitioner remained in the employment of the respondent for about 7 years with an excellent past record relating to work and conduct but the termination order was passed without any sufficient cause as he was never served with any explanation call, show cause notice, warning letter etc. and even there was no allegation or chargesheet against him. It is also stated there arose no occasion for any enquiry as the petitioner was neither served any notice to attend the enquiry nor he was intimated regarding the appointment of enquiry officer and further he was never served by the enquiry officer to attend the enquiry and if any proceedings were held behind the back of the petitioner are nonest as per the provisions of law of natural justice, hence, the termination of the services of the petitioner is covered within the ambit of section 2-OO of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). That the services of the petitioner were continuous as he had completed more than 240 days in twelve calendar months preceding to his termination and the respondents have retrenched his services without following the mandatory and statutory provisions of section 25-F/N of the Act as neither any notice was issued to him nor he was paid wages in lieu of that and even the respondents did not obtain the prior permission of the Appropriate Government before terminating his services. That the termination of the services of the petitioner is in violation of sections 25-G and 25-H of the Act as the respondents have retained a good number of junior workmen in employment. Against his back-drop it has been prayed that the termination order dated 29.8.2013 be set aside and the petitioner be awarded reinstatement with full back-wages, seniority, continuity and other consequential service benefits.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken that the reference is neither competent nor maintainable. On merits, it has been asserted that the petitioner was appointed as office clerk *w.e.f.* 1.6.2007 and his services were terminated on the ground of misconduct after holding proper domestic enquiry on a complaint dated 31.7.2013. It is further asserted that on receiving complaint dated 31.7.2013 a fact finding committee of two members namely S/Shri V. K. Gupta and Vinod Kumar was appointed and directed to enquire the matter *vide* office order dated 31.7.2013 who submitted the preliminary report on 1.8.2013 wherein they recommended for a detailed enquiry and on the basis of preliminary enquiry, suspension order was passed against the petitioner on 2.8.2013 and on

5.8.2013, three members committee was constituted to investigate the matter against the petitioner and he was informed about this investigation *vide* letter dated 7.8.2013 along-with chargesheet and the petitioner was asked to submit reply which was received on 19.8.2013 wherein the petitioner without any proof refuted and showed his dissatisfaction against the suspension order dated 31.7.2013. The petitioner did not appear before the enquiry committee despite proper communications and on the basis of report of enquiry committee, the services of the petitioner were terminated. That the service of the petitioner did not attract the provisions of the Act, hence, the question of complying with the mandatory provisions of the Act does not arise at all. That before terminating the services of the petitioner proper enquiry was conducted and after affording the due opportunities to him, his services were terminated. With the aforesaid averments the respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated the allegations as made in the claim petition by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 9.5.2016.

- (1) Whether the termination of the services of the petitioner *vide* letter dated 29.8.2013 by the respondents without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP*.
- (2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ...*OPP*.
- (3) Whether the petition is neither competent nor maintainable as alleged? ...*OPR*.
- (4) Relief.

6. I have heard the AR for the petitioner and learned Counsel for respondents and also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1	Yes.
Issue No. 2	Entitled to reinstatement with seniority and continuity but without back- wages.
Issue No. 3	No.
Relief.	Reference answered in favour of the petitioner and against the respondents per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The AR for the petitioner contended that before terminating the services of the petitioner neither any chargesheet was served upon him nor any enquiry was conducted against him. He further contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when

he had completed more than 240 days in each calendar year and in twelve calendar months preceding his termination. He also contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand, the learned counsel for the respondents contended that the services of the petitioner were terminated after holding a proper domestic enquiry but the petitioner did not participate in the enquiry proceedings. He further contended that since the petitioner had committed misconduct, hence, the respondents constituted three members committee who submitted their report to the respondents and on the basis of enquiry report, he was terminated from services.

10. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as clerk on 1.5.2007 and worked up to 28.8.2013. He further deposed that he was suspended on 2.8.2013 vide suspension order Ex. PW-1/A. He tendered in evidence reply filed by him Ex. PW-1/B. He also deposed that no chargesheet was issued to him and no enquiry was conducted against him and no compensation was paid to him and his services were terminated on 29.8.2013 vide termination order Ex. PW-1/C. He further stated that after his termination, vide letter dated 18.9.2013 Ex. PW-1/D, he had demanded the documents from the respondent. He further stated that he is unemployed. In cross-examination, he denied that on the basis of the complaint dated 31.7.2013, a preliminary enquiry was conducted against him and a report was submitted on 1.8.2013 by the committee constituted by the management, in which allegations of misconduct were leveled against him. He admitted that on 2.8.2013, suspension order was issued against him. He denied that on 5.8.2013, a three member committee was constituted to enquire into the matter. He further denied that on the basis of letter dated 5.8.2013, a chargesheet was issued to him vide letter dated 7.8.2013. He also denied that he is running a paying guest house near the institution under the name and style of "Ashirwad". He denied that various letters were issued to him to participate in the enquiry but despite that he had not joined the enquiry. He further denied that in the enquiry report charges of misconduct were proved against him. He also denied that a second show cause notice was issued to him on 24.8.2013 prior to his termination. He denied that entire information was supplied to him on 6.2.2014 which was demanded by him vide letter Ex. PW-1/D.

11. On the other hand, the respondents have examined three RWs. Lt. Col (Retd.) Jeet Singh, Registrar of the respondents appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter Ex. RW-1/B, copy of complaint dated 31.7.2013 Mark R-1, office order dated 31.7.2013, Mark R-2, enquiry report Mark R-3, suspension order Mark R-4, office order dated 5.8.2013 Mark R-5, suspension order dated 5.8.2013 Mark R-6, letter regarding the investigation of charges Mark R-7, letter regarding dissatisfaction against suspension order Mark R-8, committee report Mark R-9, letter regarding investigation of report mark R-9, letter regarding investigation of case Mark R-10 and termination letter Ex. RW-1/C. In cross-examination, he denied that the list of charges was not supplied to the petitioner. He admitted that no document has been annexed by the respondent regarding the ownership of the guest house by the petitioner. He further admitted that the copy of complaint has not been annexed with the list of charges mark R-2. He also admitted that there is no statement of any student regarding the charges leveled against the petitioner. He denied that the complaint Mark R-1 has not been submitted by any person as the same has been fabricated in the office. He further denied that the petitioner was not given any intimation with respect to the preliminary enquiry held against him. He admitted that there is no document in writing regarding the intimation. He denied that no suspension order was served upon the petitioner. He admitted that office order Mark R-5 was not communicated to the petitioner. He denied that letter mark R-7 was never sent to the petitioner. He further denied that the petitioner was never informed about the enquiry. He admitted that no letter has been sent to the

petitioner through registered post intimating him about the date of enquiry. He denied that neither the charge-sheet was served upon the petitioner nor any enquiry was held against him. He admitted that the enquiry report mark R-9 never served to the petitioner. He denied that all the documents tendered in evidence today are fabricated and they have not been produced before the conciliation officer. He further denied that the petitioner was never given any opportunity to defend himself. He admitted that second show cause notice was not issued to the petitioner prior to his termination. He denied that the enquiry was not conducted in a fair and proper manner.

12. Sh. Shiv Kumar, Assistant Librarian appeared into the witness box as RW-2 and tendered in evidence his affidavit Ext. RW-2/A wherein he has stated that the petitioner is running a paying guest house under the name and style of Aashirwad in the periphery of the institution and it was known to him that the enquiry was conducted against the petitioner on a complaint dated 31.07.2013. He further stated that after receiving complaint dated 31.07.2013, a fact finding committee of two members, namely, Sh. Vivek Gupta and Sh. Vinod Kumar was appointed and directed to enquire into the matter *vide* office order dated 31.07.2013 and his statement as well as of other incumbents Sh. Rohit Kumar, Sh. Sanjay Sharma, Ms. Aruna Thakur, Sh. Govind Jassal, Sh. Rewati Nandan, Sh. Gagan Kumar, Sh. Sumesh Kumar Shandil, Sh. Tarsem Bansal, Sh. Rahul Diwed, Sh. Varjinder Shail, Ms. Shabnam, Ms. Ritika Pankaj etc. were recorded by the fact finding committee. He further stated that the committee submitted their preliminary enquiry report on 01.08.2013, wherein it has been reported that the petitioner is in habit motivating and diverting the poly technical students to stay in his own paying guest accommodation, namely Ashirwad instead of hostel of college. He also stated that on the basis of preliminary enquiry suspension order dated 08.02.2013 was passed against the petitioner and, three members committee was constituted to enquire the matter and the petitioner was informed about the initiation of enquiry *vide* letter dated 07.08.2013 along-with charge-sheet dated 07.08.2013. That the petitioner failed to appear before the Enquiry Committee and the committee submitted its report on 24.08.2013 and as such, before imposing the penalty of punishment a show cause notice dated 24.08.2013 was issued to him. That before terminating the services of the petitioner, he was afforded due opportunity to refute the allegations levied against him. He also tendered in evidence his statement before the enquiry officer dated 1.8.2013 Mark RX-1. In cross examination, he admitted that he has no proof regarding running of guest house by the petitioner. He further admitted that a preliminary enquiry was held and the petitioner was called. He also admitted that his statement was never recorded by the enquiry officer. He admitted that a regular enquiry was conducted by the enquiry officer. He denied that the enquiry officer had not summoned the petitioner to participate in the enquiry. He further denied that the services of the petitioner were terminated without holding any enquiry.

13. RW-3 Sh. Sita Ram tendered in evidence his affidavit Ext. RW-3/A, wherein he has reiterated almost all the averments as stated by RW-2 in his affidavit Ex. RW- 2/A. He also tendered in evidence his statement before enquiry officer dated 1.8.2013 mark RX-2. In cross-examination, he stated that the statement of other witnesses were not recorded in his presence. He admitted that show cause notice to the petitioner was not issued by him. He denied that he had not given any statement before the enquiry officer.

14. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner was appointed as an office clerk by the respondents *w.e.f.* 1.5.2007. It has also become clear that a complaint dated 31.7.2013 mark R-1 was received against the petitioner and a fact finding committee of two members namely Shri V. K. Gupta and Vinod Kumar was appointed and was directed to enquire into the matter *vide* office order dated 31.7.2013 mark R-2 and the committee submitted their preliminary enquiry report on 1.8.2013 mark R-3 in which it was found that the petitioner was motivating and diverting the Polytechnic students to stay in his own P.G instead of polytechnic hostels of the respondents. On the basis of the preliminary enquiry the suspension order dated 2.8.2013 mark R-4 was passed against the

petitioner and *vide* letter dated 5.8.2013, mark R-5, a three members committee was constituted to investigate the matter against the petitioner. The committee submitted its report Mark R-9 wherein the charges leveled against the petitioner stood proved and on the basis of the report of the committee the termination order dated 29.8.2013 Ex. PW-1/C was passed against the petitioner.

15. The case of the respondents is that the petitioner was informed about the enquiry *vide* letter dated 7.8.2013 Mark R-7 along-with chargesheet whereas the case of the petitioner is that no chargesheet was ever served upon him and he was never served to attend the enquiry proceedings. The further case of the petitioner is that he was not aware about the constitution of three members committee in order to enquire the matter against him and letters of different dates were never served upon him. Now, the question which arises for consideration before this Court as to whether the petitioner was served in the domestic enquiry conducted against him by the respondents and whether the enquiry conducted against him is unfair and violative of principles of natural justice. It is a settled proposition of law that the technicalities of the Evidence Act are not applicable in the domestic enquiry but at the same time it is also true that the domestic enquiry is not an empty formality and the principles of natural justice have to be followed. In **State of Haryana Vs. Rattan Singh (1977) 2 SCC 491**, it has been held by the Hon'ble Apex Court as under:

“In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence—not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding”.

16. From the perusal of the entire evidence on record, it has become clear that the petitioner was never served in the enquiry conducted against him. RW-1 admitted that the office order mark R-5 was not communicated to the petitioner. He further admitted that letter mark R-7 was sent through ordinary post and no letter was sent to the petitioner through registered post intimating him about the date of the enquiry. He also admitted that the enquiry report mark R-9 was never served upon the petitioner. He admitted that 2nd show cause notice was never issued to the petitioner prior to his termination. Therefore, in view of the admission of RW-1, it has become clear that the office order regarding the constitution of three members committee, enquiry report and 2nd show cause notice were never served upon the petitioner. There is also no evidence on record to suggest that the petitioner has received letter mark R-7 which is regarding the intimation of date of enquiry particularly in view of the admission of RW-1 that the aforesaid letter was never sent to the petitioner through registered post. In fact, no satisfactory evidence has been placed on record by the respondents to show that the petitioner was intimated about the fact that the enquiry was ordered to be conducted against him and that he was intimated about the date of the enquiry. The respondents have failed to produce any member of the committee in the witness box and had also failed to prove the enquiry proceedings and enquiry report in accordance with law. It was incumbent upon the respondents to have produced the member/s of the committee in the witness box but for the reasons best known to the respondents, they have failed to examine anyone of them before this Court. Hence, an adverse inference has to be drawn against the respondents. Therefore,

in the absence of any satisfactory and cogent evidence on record, it has been proved that the petitioner was not served in the enquiry proceedings and was not given fair and reasonable opportunity to defend himself in the enquiry proceedings. Hence, the denial of opportunity to the petitioner is clear cut violation of the principles of natural justice. Thus, keeping in view my foregoing observations, I have no hesitation in holding that the domestic enquiry conducted against the petitioner is violative of the principles of natural justice.

17. There can be no doubt about the fact that the respondents were entitled to lead evidence on merits before this Court in order to prove the misconduct of the petitioner in case the enquiry conducted against him was found to be in violation of the principles of natural justice. Therefore, the next question which arises for consideration before this Court as to whether the alleged misconduct of the petitioner has been proved against him before this Court or not. The misconduct as alleged against the petitioner is that he was in a habit of motivating and diverting the Polytechnic Students to stay in his own paying guest house “Ashirwad” instead of hostels of the College. However, no cogent and satisfactory evidence has been led by the respondents before this Court to prove the aforesaid misconduct alleged against the petitioner. RW-1 admitted that no document has been annexed by the respondents regarding the ownership of the guest house in the name of the petitioner. RW-2 also admitted in cross-examination that he had no proof regarding the running of the guest house by the petitioner. RW-1 also admitted that there is no statement of any student regarding the charges leveled against the petitioner. The respondents have also failed to produce Mr. Vrijender Shail in the witness box who had submitted the complaint dated 31.7.2013 Mark R-1 against the petitioner. RW-2 also expressed his ignorance as to who had lodged the complaint dated 31.7.2013 against the petitioner. At this stage, I would like to point out that the best evidence which the respondents were required to adduce before this Court could have been the students who were allegedly motivated and diverted by the petitioner to stay in his own paying guest house but no such evidence has been brought before this Court by the respondents. Even, the respondents have not produced any evidence before this court that the petitioner was the owner of the guest house namely “Ashirwad”. Hence, in the absence of any cogent and satisfactory evidence on record, the respondents have failed to prove the alleged misconduct against the petitioner before this Court.

18. Therefore, since the domestic enquiry conducted against the petitioner was violative of principles of natural justice and also in view of the fact that the alleged misconduct could not be proved by the respondents before this Court, it can safely be held that the termination of the services of the petitioner is illegal and unjustified.

19. It is not disputed that the petitioner had worked continuously with the respondents *w.e.f.* May, 2007 till 29.8.2013. It is also not disputed that the petitioner had completed more than 240 days in each calendar year and also in twelve calendar months preceding his termination. It is further clear from the record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor he was paid compensation in lieu thereof. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondents to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondents have failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

“34.The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25-F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the

same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

20. In the present case also as observed aforesaid, the respondents have failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, in view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 29.8.2013 by the respondents without complying with the provisions of section 25-F of the Act, is illegal and unjustified. Accordingly, issue No.1 is decided in favour of the petitioner and against the respondents.

Issue No. 2:

21. Since, I have held under issue No.1 above that the termination of the services of the petitioner by the respondents *w.e.f.* 29.8.2013 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the AR for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the dismissal of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No.2 is partly decided in favour of the petitioner and against the respondents.

Issue No. 3:

25. In support of this issue, no evidence has been led by the respondents which could go to show as to how the present petition is neither competent nor maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said the petition is neither competent nor maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issues No. 1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages. The reference stands answered in favour of the petitioner and against the respondents. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 31st Day of May, 2018.

Sd/-

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SH. SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 06 of 2016

Instituted on 18-1-2016

Decided on 22-5-2018

Manoj Kumar s/o Shri Ramanand, Village Dhanot, P.O. Theog, Tehsil Theog, Distt. Shimla, H.P., Through Shri J.C. Bhardwaj President: HP-AITUC, HQ Saproon, Solan, H.P.

...Petitioner.

Vs

The Commissioner-cum-Chief Executive Officer, Shimla Environment Heritage Conservation and Beautification Society (SEHB) Municipal Corporation, Shimla, H.P.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR.

For respondent : Ms. Chander Kanta, Advocate *vice* csl.

AWARD

The following reference has been sent by the appropriate government for adjudication:—

“Whether termination of the services of Shri Manoj Sagar r/o Inder Niwas, Dhingu Estate, Lower Cemetery, Sanjauli, Shimla-171006 by the Commissioner-cum-Chief Executive Officer, Shimla Environment Heritage Conservation and Beautification Society (SEHB), Municipal Corporation, Shimla w.e.f. 08.04.2013 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of reinstatement, back wages, compensation seniority and other service benefits the above aggrieved workman is entitled to from the above employer/society?”

2. In nutshell the case of the petitioner is that during the month of December, 2010, he was engaged as supervisor by the respondent and worked till 8.4.2013 continuously and thereafter his services were terminated without any cogent reason and justification despite the fact that he had worked for more than 240 days within twelve calendar months preceding his termination. It is further stated that the respondent did not comply with the statutory and mandatory provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) as neither any notice was served upon the petitioner nor he was paid in lieu of that and even no opportunity to defend himself had been afforded to the petitioner before terminating his services. It is also stated that the termination of the services of the petitioner is based on surmises and conjectures as after his termination, unfair labour practice had been adopted as his juniors were retained and new hands were also recruited and deployed in his place in violation of the provisions of sections 25-G and 25-H of the Act. It is also stated that the work and conduct of the petitioner throughout his service tenure was excellent and he has been appreciated many times by his superiors for his skilful and excellent working and during entire period of his service, he was never served with any explanation call/warning letter etc. and after his removal, the petitioner is unemployed. Against his back-drop it has been prayed that the termination of the petitioner be declared illegal and unjustified and he be reinstated in service by setting aside the order of termination dated 8.4.2013 with seniority and other consequential benefits along-with full back-wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability and suppression of material facts. On merits, it has been denied that petitioner remained continuously working till 8.4.2013. It is further denied that his services were terminated illegally by the respondent without any cogent reason and justification. It is also denied that the petitioner had completed 240 days in 12 calendar months. It is asserted that the services of the petitioner were terminated on the ground of embezzlement as on 30.3.2013, he issued a receipt in lieu of garbage collection to the owner of Bye-pass Dhaba near Dhalli Shimla-12 for a sum of ₹ 1000/- whereas he submitted the carbon copy of the said receipt for a sum of ₹ 350/- to the respondent society and enquiry conducted by the respondent found the petitioner guilty of misappropriating the amount as received by him. Similarly, the petitioner also misappropriated with the membership fee to the tune of ₹ 8150/- which was collected by him from the people of vicinity of Ward No. 18 Dhalli and the said amount was deposited by the petitioner after a lapse of eight months whereas he was duty bound to deposit the collected amount within three days in the office of the society. It is further asserted the petitioner was also found not to mention the dates on the receipts of amount collected from the people as well as on the counter foil/carbon copies for which the petitioner was given warning but he was in the habit of misappropriating the amount so collected by him. It is also asserted that the respondent society is registered in the name & style of “Shimla Environment Heritage Conservation and Beautification Society” under the Himachal Pradesh Societies Registration Act, 2006 and it has been mentioned in the Regulation of the Employees of the Society that the service contract of the employee concerned

shall be terminated/dispensed without assigning any reason and employee shall not be entitled to receive any notice or notice pay in lieu thereof. That it has been agreed by the petitioner in the agreement that he had been appointed for one year and his services shall be terminated automatically after the completion of one year without any prior notice, hence, no notice was required for his termination. It is asserted that the services of the petitioner had been terminated as per the regulation framed for regulating the service of the society as well as agreement as executed by the petitioner with the respondent and moreover the petitioner had tendered written apology wherein he had admitted the factum of embezzlement during the course of his employment. It is denied that after the termination of the petitioner junior were retained and new hands were also recruited and employed in his place by the respondent society. With the aforesaid averments the respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated the allegations as made in the claim petition by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 2.9.2016.

- (1) Whether the termination of the services of the petitioner *w.e.f.* 8.4.2013 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...*OPP.*
- (2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ...*OPP.*
- (3) Whether the claim is not maintainable as alleged? ...*OPR.*
- (4) Relief.

6. I have heard the AR for the petitioner and learned vice csl. for respondent and also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1	Yes.
Issue No. 2	Entitled to reinstatement in service with seniority and continuity but without back-wages.
Issue No. 3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondent illegally without conducting any enquiry and without complying with the provisions of section 25-F of the Act. The further case of the petitioner is that after his termination, the respondent had retained his junior and engaged fresh hands in violation of the provisions of sections 25-G and 25-H of the Act.

9. On the other hand, the case of the respondent is that the services of the petitioner were terminated on the ground of embezzlement during the course of his employment as per the regulation framed for regulating the service of the society as well as agreement executed by the petitioner with the respondent, hence, there has been no need to serve any notice upon the petitioner before terminating his services.

10. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was engaged as supervisor by the respondent in the month of December, 2010 and worked as such till 8.4.2013 continuously and thereafter his services were terminated without serving any notice and without paying retrenchment compensation. He further stated that he had completed more than 240 days in each calendar year and also in twelve calendar months preceding his termination. He also stated that his services were terminated for some alleged error in receipt book but neither show cause notice nor chargesheet was ever served upon him before terminating his services and no enquiry had been conducted against the alleged misconduct. In cross-examination, he denied that he had not completed 240 days in a calendar year. He admitted that his services were terminated on the ground of embezzlement. He further admitted that receipt bearing No. 729598 dated 30.3.2013 was issued in favour of owner of Bye Pass Dhaba Dhali for ₹ 1000/- whereas carbon copy submitted by him in the office of respondent was of ₹ 350/- only. He further admitted that he had deposited the remaining amount of above receipt *i.e* ₹ 650/- within one month. He denied that he was found misappropriating with the membership fee to the tune of ₹ 8150/- collected by him from the member of ward no. 8 Dhalli and the same was deposited by him after about eight months. He admitted that in the month of Jan., 2013, an agreement was executed between him and the respondent society as per which initially he was engaged only for one year. He denied that show cause notice was issued to him before his termination. He admitted that on 10.4.2013, he tendered written apology to the member secretary of the respondent society. He denied that factum of embezzlement was admitted by him in written apology.

11. Before, I proceed further, it is important to mention here that on 29.11.2016, the petitioner closed his evidence and thereafter the case was being listed for the evidence of the respondent but after availing various opportunities in order to lead evidence, the respondent failed to lead any evidence, hence, the evidence of respondent was ordered to be closed vide order dated 26.3.2018.

12. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged by the respondent in the month of December, 2010 and his services were terminated *w.e.f.* 8.4.2013. The case of the respondent is that the services of the petitioner were terminated as he had been misappropriating the funds/money of the respondent society as he issued a receipt in lieu of garbage collection to the owner of Bye Pass Dhaba Dhali for a sum of ₹ 1000/- whereas he submitted the carbon copy of the said receipt for a sum of ₹ 350/- to the respondent society and on enquiry, the petitioner was found guilty of misappropriating the amount as received by him. The further case of the respondent is that the petitioner had also misappropriated the membership fee to the tune of ₹ 8150/- which was collected by him from the people of vicinity of Ward No. 18 Dhalli and the said amount was deposited by the petitioner after a lapse of eight months whereas he was duty bound to deposit the collected amount within three days and even the petitioner was also found not to mention the dates on the receipts of amount collected from the people as well as on the counter foil/carbon copies for which he was given warning but he was in the habit of mis-appropriating the amount so collected by him. From the perusal of the record it has become clear that the services of the petitioner were terminated without holding any domestic enquiry. Now, the question which arises for consideration before this Court is as to whether the action of the respondent was illegal and unjustified in terminating the services of the petitioner without holding any domestic enquiry and without following the principles of natural justice on account of the aforesaid misconduct. It is a settled legal proposition

that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent.

In **D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221**, the Hon'ble Apex Court has held as under :

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In a judgment given by our **Hon'ble High Court in ILR -XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

“8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9.....

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11.....

12.....

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

However, in the instant case, from the perusal of material available on record, it is clear that neither any show cause notice nor any chargesheet was issued to the petitioner before terminating him from service. No explanation was called for from him and no domestic enquiry was conducted against him to ascertain the charges and to provide the opportunity of being heard to him in flagrant violation of the principles of natural justice. In his deposition before this Court as PW-1, the petitioner categorically deposed that he was engaged in the month of December, 2010 and worked continuously till 8.4.2013. The aforesaid deposition of the petitioner stands un- rebutted. Therefore, it is clear that the petitioner had completed 240 days in each calendar year and in preceding 12 months before his termination. Therefore, it was incumbent upon the respondent to have conducted the enquiry against the petitioner prior to his termination. However, no enquiry was held before terminating his services on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice.

14. There can be no doubt about the fact that the respondent was entitled to lead evidence on merits before this Court to prove the alleged misconduct of the petitioner in case his dismissal

was found to be in violation of the principles of natural justice. However, despite having availed several opportunities in order to lead the evidence, the respondent failed to lead any evidence before this Court in order to prove the alleged mis-appropriation by the petitioner. Hence, in the absence of any cogent and satisfactory evidence on record, the respondent has failed to prove the alleged mis-conduct of the petitioner before this Court.

15. As observed earlier, the petitioner had worked with the respondent *w.e.f.* December, 2010 till 8.4.2013 meaning thereby that he had completed 240 working days with the respondent in each calendar year and in preceding twelve calendar months from the date of his termination. It is also clear from the material available on record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor he was paid compensation in lieu thereof. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

“34.The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

16. In the instant case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 8.4.2013 by the respondent without conducting the enquiry and without complying with the provisions of section 25-F of the Act, is improper and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 2:

17. Since I have held under issue No.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

18. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the AR for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70,**

M/s Ritu Marbals Vs. Prabhakant Shukla that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

19. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

20. In the present case there is no evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondent.

Issue No. 3:

21. In support of this issue, no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable especially when the petitioner has filed the present petition pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with the present petition which is perfectly maintainable. Therefore, in the absence of any evidence on record, it cannot be said that the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages. The reference stands answered in favour of the petitioner and against the respondent. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 22nd Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 92 of 2017

Instituted on 7-6-2017

Decided on 22-5-2018

Pramod Kumar Choudhary s/o Shri Daya Ram Choudhary r/o Village Johran, P.O. Puruwala, Tehsil Paonta Sahib, District Sirmaur, H.P. through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP.*Petitioner.*

VS.

1. The Managing Director M/s. Elder Pharmaceuticals Ltd., Elder House Plot No. C-9, Dalia Industrial Estate, Off Vira Desai Road, Andheri (West) Mumbai-53.
2. The Vice President/Occupier, M/s. Elder Pharmaceuticals Ltd., Plot No. 103, Gondpur, Industrial Area, Paonta Sahib-173025 H.P.

...*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR.

For respondents : Already ex-parte.

AWARD

The following reference has been sent by the appropriate government for adjudication:—

“Whether termination of services of Shri Pramod Kumar Chaudhary s/o Shri Daya Ram Chaudhary, r/o Village Johran, P.O. Puruwala, Tehsil Paonta Sahib, Distt. Sirmaur H.P. w.e.f. 18.5.2016 by the management of M/s Elder Pharmaceuticals Ltd. Plot No. 103, Gondpur Industrial Area, Paonta Sahib, Distt. Sirmaur, H.P. allegedly without complying with the provision of the Industrial Disputes Act, 1947 is legal and justified? If not what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In nutshell the case of the petitioner is that he was appointed as skilled workman at first instance on 25.8.2009 on probation for six months and after the successful probation period his services were confirmed on 9.4.2010 and his salary was revised from ₹ 7100 to ₹ 8100/- per month and thereafter during the month of May, 2011 and June 2012, his salary was again revised to the higher side and during the month of May, 2014 his services were transferred from M/s Elder Health care Ltd to M/s Elder Pharmaceutical Ltd., with the condition that joining of the petitioner shall remain in existence w.e.f. 19.8.2009. It is further stated that on 26.3.2016, the petitioner along-with other workmen served a demand notice under section 2-K of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) on the respondent company wherein the respondent management had been requested for fixation of the basic salary after granting hike in the gross salary and they have further demanded payment of bonus and detail of provident fund and ESI deposited with the

respective departments, grant of LTA and medical allowance and its payment timely to all the workmen, designation in accordance with their nature of work, framing of promotion policy for regular employees and the regularization of temporary employees in the company and on the demand notice many conciliation meetings were held but the respondent management did not agree to any of the legitimate and statutory demands raised by the workmen. It is also stated that during the pendency of the conciliation proceedings the management pressurized the workmen to withdraw the said demand notice and when they did not agree to the same the management started victimizing them and hatched a conspiracy to oust the petitioner who was the main instrument in pursuing the said demand notice. It is stated that on 17.5.2016, when the petitioner was on his way to his home the two officers of the company came out-side the factory and started abusing and provoking the petitioner and finally dragged him into a scuffle during which one of the officer of the company sustained a very minor injury but the petitioner never carried any intention of hurting anyone physically and thereafter the petitioner was removed from services *vide* termination order dated 18.5.2016. That the petitioner had worked for more than seven years and had completed 240 days in every calendar year and his termination without complying with the statutory norms of section 25-F of the Act is invalid. That the reason given in the letter of termination is contrary to the factual position existing regarding work in the company, hence, the action of the respondent in terminating the services of the petitioner is in violation of sections 25-G and 25-H of the Act. That neither any show cause was served upon the petitioner nor any enquiry was conducted before terminating his services and even his termination during the pendency of demand notice dated 26.3.2016 before the Labour-cum-Conciliation Officer is against the provisions of section 33 of the Act. Against his back-drop a prayer has been made that the respondents be directed to reinstate the petitioner in the employment, retrospectively, with seniority and other consequential service benefits along- with full back-wages.

3. Before, I proceed further it is important to mention here that the respondent was duly served but failed to appear before this Court, hence, *vide* order dated 27.12.2017, the respondents were proceeded against *ex-parte* and thereafter the case was listed for *ex-parte* evidence of the petitioner.

4. The petitioner stepped into the witness box as PW-1 to depose that he was appointed as skilled operator in the respondent company on 25.8.2009 on probation for six months and thereafter his services were confirmed *vide* letter dated 3.8.2010 Mark PX. He further disposed that *vide* letters dated 2.5.2011 Mark PY and 19.6.2012 mark PZ, the increments for the year 2011 and 2012 have also been paid to him. He further deposed that initially he was appointed in Elder Health care Ltd., Paonta Sahib and thereafter he was given job at Elder Pharmaceutical Ltd., Paonta Sahib *vide* letter dated 1.5.2014 mark PZ-1. He also stated that his services were terminated on 1.5.2014 because the workers had given a demand notice to the company with a copy to the Labour Officer. He also tendered in evidence the copy of complaint filed by him to SHO P.S Paonta Sahib Mark PZ-2 and SP Sirmaur Mark PZ-3. He further stated that neither any chargesheet was issued to him nor any enquiry was conducted against him prior to his termination and no notice was issued and no retrenchment compensation was paid to him.

5. I have heard the AR for the petitioner and also scrutinized the entire evidence on record carefully. From the closer scrutiny of the evidence and material on record, it has become clear that the petitioner was engaged by M/s Elder Health Care Ltd., Paonta Sahib on 25.8.2009 on probation for six months and thereafter *vide* letter dated 9.4.2010 Mark PX, he was confirmed in service as “skilled category” worker *w.e.f.* 1.3.2010. From the perusal of letters Mark PY and Mark PZ, it is also clear that the wages/salary of the petitioner was revised from time to time. *Vide* letter dated 1.5.2014, Mark PZ-1, the services of the petitioner were transferred from M/s Elder Health Care Ltd., to M/s Elder Pharmaceuticals Ltd., and as per the terms of transfer, there was no break or interruption in the services of the petitioner. It has been stated in the claim petition that on

17.5.2016, when the petitioner was on his way to his home, two officers of the company came outside the factory and started abusing and provoking the petitioner and finally dragged him into a scuffle during which one of the officers of the company sustained a very minor injury and thereafter the petitioner was removed from his service *vide* termination order dated 18.5.2016 on the basis of fabricated notion of misbehavior. In his deposition as PW-1, the petitioner deposed that neither any chargesheet was issued to him nor any enquiry was conducted against him prior to his termination. The deposition of the petitioner stands un-rebutted. It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if there is proved misconduct against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. In **D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments-221**, the Hon'ble Apex Court has held as under:

“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”

In a judgment given by our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

“8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9.....

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11.....

12.....

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, the petitioner was never asked to answer any charges as no chargesheet was issued to him. There is no material on record to suggest that whether any enquiry was conducted against the petitioner before terminating his services on the basis of the alleged misconduct. Therefore, the termination order dated 18.5.2016 without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice.

6. The petitioner had worked with the respondents for more than seven years meaning thereby that he had completed 240 working days with the respondent in each calendar year and in preceding twelve calendar months preceding the date of his termination. It is also clear from the

record that neither any notice as prescribed under section 25-F of the Act was served upon the petitioner nor he was paid any compensation in lieu thereof. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondents to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondents have failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

“34.The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

7. In the present case also as observed aforesaid, the respondents had failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 18.5.2016 by the respondents without complying with the provisions of section 25-F of the Act and without conducting any enquiry is illegal and unjustified, as such the petitioner is held entitled to reinstatement in service with seniority and continuity.

8. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the AR for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

9. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that:

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

In the present case, the petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination. Therefore, in view of the entire evidence on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back-wages.

RELIEF

As a sequel to my above discussion, the claim of the petitioner succeeds and is hereby allowed with the result, the respondents are directed to reinstate the petitioner in service forthwith with seniority and continuity. However, the petitioner is not entitled to any back-wages. The reference is answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 22nd day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

App. No. 43 of 2016

Instituted on 10-5-2016

Decided on 18-5-2018

Dhuni Chand s/o Shri Bala Ram r/o Village Bathora, P.O Pandoa, Tehsil Sunni, District Shimla, H.P. *...Petitioner.*

Vs.

The Factory Manager, M/s Super Multicolor Pvt. Ltd., VPO Kishanpura (Baddi) Tehsil Nalagarh, District Solan, H.P. *...Respondent.*

Claim petition on behalf of the petitioner.

For petitioner : Shri Niranjana Verma, Advocate.

For respondent : Already ex-parte.

AWARD/ORDER

In nutshell the case of the petitioner is that on 23.3.2010, he was appointed as an Operator on monthly salary of ₹ 14,700/- and he had completed 240 days in the calendar year with the respondent. It is further stated that the petitioner fell ill and got the treatment from ESI Dispensary Nalagarh, and the Doctor had advised him complete rest, hence, the petitioner was on medical leave

from 15.9.2015 to 30.9.2015 but on 1.10.2015, when the senior medical officer ESI dispensary Nalagarh issued him fitness certificate he came to respondent for his joining but the respondent refused to assign him any work and verbally terminated his services in an illegal manner without complying with the mandatory provisions of the Industrial Disputed Act, 1947 (herein after referred to as Act) and that too without affording any opportunity of being heard as neither any notice was issued nor any enquiry was conducted against him. It is also stated that wages of September 2015 and bonus for the years, 2012-13, 2013-14, 2014-15 was not paid to the petitioner and even the petitioner had requested for his re-engagement but of no avail. Against this back-drop, it has been prayed that the petition be allowed by holding the retrenchment of the petitioner unjustified.

2. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, and suppression of material facts from this Court. On merits, it has been asserted that the petitioner had joined on 1.6.2010. It is further asserted that the petitioner came without fitness certificate which was necessary for rejoining and when he was asked for the fitness certificate from the medical officer, he showed his inability to produce the same and thereafter he was sent a register letter asking him to come to the factory and settle the dispute but he never paid any heed to come to the factory and settle his dispute. It is denied that the petitioner was retrenched from service. It is asserted that after proceeding on ESI leave, the petitioner never joined the office and the petitioner is only entitled to ₹ 30158/- towards his total amount due as his full & final settlement which the company is ready and willing to pay to him. The respondent prayed for the dismissal of the claim petition.

3. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 20.5.2017.

- (1) Whether the termination of the services of the petitioner without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? ...OPP.
- (2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? ...OPP.
- (3) Whether the petition is not maintainable as alleged? ...OPR.
- (4) Relief.

4. I have heard the learned counsel for the petitioner and have also gone through the record of the case.

5. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	Yes.
Issue No. 2	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue No. 3	No.
Relief.	Application allowed per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

6. The case of the petitioner is that he had completed 240 days in each calendar year and his services had been terminated by the respondent illegally without complying with the provisions of Section 25-F of the Act.

7. On the other hand, the case of the respondent is that the services of the petitioner were never terminated by the respondent who after proceeding on ESI leave, failed to rejoin his duties.

8. To prove his case, the petitioner stepped into the witness box as PW-1 to depose that he was appointed as an operator on 23.3.2010 and worked till 1.10.2015 and his last drawn salary was ₹ 14,700/- per month. He further deposed that he had completed 240 days in each calendar year and his juniors namely Shaitan Singh and Harinder Gupta were retained. He also stated that he fell ill from 15.9.2015 to 30.9.2015 and he got treatment from Nalagarh and placed on record the medical certificate mark PX. He further stated that he had produced the medical certificate on 1.10.2015, before the respondent but they have refused to take his joining. He was not issued any notice and paid any compensation and no enquiry was held against him. He also tendered in evidence the copy of demand notice Mark PY, postal receipts Ex. PW-1/A to Ex. PW-1/C and copy of ESI card Ex. PW-1/D. In cross-examination, he denied that no fitness certificate was produced by him after he availed his medical leave. He denied that after receiving mark RX-2 he never went back to the respondent company and instead he filed the present application. He further denied that his services were never terminated. He also denied that due to his inability to submit fitness certificate, the respondent company had to engage new operator as they were running in losses. He denied that he had left the job at his own.

9. PW-2 Shri Rakesh Kumar, Labour Inspector has stated that the demand notice dated 12.10.2015 Ex. PW-2/A was received by their office but the conciliation could not be materialized.

10. Before, I proceed further it is important to mention here that on 2.11.2017, the learned counsel for the respondent had filed an application under section 151 CPC for pleading no instruction on behalf of the respondent and for withdrawing the power of attorney which was allowed and thereafter this Court/Tribunal issued fresh notice to the respondent but despite having been served, none appeared on behalf of respondent, hence, *vide* order dated 9.1.2018, the respondent was proceeded against ex-parte.

11. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner was working as operator with the respondent. The case of the petitioner is that he was appointed on 23.3.2010 however, the perusal of the appointment letter Mark RX-1 shows that he was appointed on 1.6.2010. No evidence to the contrary has been led by the petitioner rather he admitted in cross-examination the aforesaid appointment letter Mark RX-1. Therefore, it can safely be held that the petitioner was appointed by the respondent *w.e.f.* 1.6.2010. The further case of the petitioner is that he was on medical leave from 15.9.2015 to 30.9.2015 and on 1.10.2015, he came to the respondent for joining the duties but the respondent management had refused to assign him any work and verbally terminated his services whereas the case of the respondent is that the petitioner came without fitness certificate which was necessary for re-joining and when he was asked for the fitness certificate, he showed his inability to produce the same. The petitioner specifically deposed in his deposition before this Court that he had produced fitness certificate before the respondent but they have refused to take his joining. This deposition of the petitioner had gone un-rebutted as no evidence has been led by the respondent in order to prove its case. Therefore, in the absence of any evidence on record on the

part of the respondent, it cannot be said that the petitioner had failed to produce fitness certificate for his re-joining after availing the medical leave. Moreover, **in (2008)-4 SCC 42 Pepsu Road Transport Corporation Vs. Rewal Singh**, it has been held that the dismissal of a workman on the ground of absence for few days is excessively high. The relevant portion of the aforesaid judgment is reproduced as under:

“17..... The dismissal of workman on the ground of absence for few days, according to the Labour Court was grossly disproportionate and excessively high. In our judgment, the Labour Court had not committed error of law in recording such finding. Reinstatement granted to the respondent workman, therefore, needs no interference”.

In the instant case also in view of the aforesaid law laid down by the Hon'ble Supreme court, the termination of the petitioner due to his absence for few days on medical grounds is grossly disproportionate and excessively high.

12. It is an admitted case of the respondent that the petitioner had joined on 1.6.2010 and he had worked till 14.9.2015 meaning thereby that the petitioner had completed more than 240 days in each calendar year and in preceding twelve months prior to his termination. It is not in dispute that neither any notice had been issued to the petitioner nor he was paid any compensation prior to his termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of Section 25-F of the Act which lays down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of Section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

“34.The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

13. In the present case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating the services of the petitioner. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without complying with the provisions of section 25-F of the Act is illegal and unjustified.

14. It is also an admitted case of the respondent that a new operator has been appointed by the respondent in place of the petitioner. There is no evidence on record to suggest that whether any opportunity was given to the petitioner for his re-employment before engaging new operator in his place in terms of section 25-H of the Act. Hence, in the absence of any evidence on record, in my considered view the termination of the services of the petitioner is also in violation of the provisions of section 25-H of the Act.

15. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 2:

16. Since, I have held under issue No. 1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

17. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) S L J S.C 70, M/s. Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

18. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

19. In the present case except for the bald statement of the petitioner there is no other evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondent.

Issue No. 3:

20. In support of this issue, no evidence has been led by the respondent which could go to show as to how the present petition is not maintainable. Moreover, PW-2, Labour Inspector, Nalagarh has deposed that the demand notice dated 12.10.2015 Ex. PW-2/A was received by their office but on the demand notice the conciliation could not be materialized and thereafter the petitioner had directly filed the application before this Court. Therefore, it cannot be said the petition is not maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issues No. 1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
*Presiding Judge, Industrial Tribunal-cum-
Labour Court, Shimla.*

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 18 of 2011

Instituted on 13-6-2011

Decided on 8-5-2018

Raghuvir Singh s/o Shri Ram Dass, r/o Village Kalujhanda, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. *..Petitioner.*

V/S.

M/s. Biogenetic Drugs Pvt. Ltd., Village Jharmajri, Baddi, District Solan, HP through its Managing Director *..Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K. Khidtta, Advocate
For respondent : Shri Rajiv Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under:—

“Whether the dismissal of the services of Shri Raghuvir Singh s/o Shri Ram Dass, helper, by the Managing Director, M/s Biogenetic Drugs Private Limited, Village Jharmazri, Baddi, District Solan, H.P. w.e.f. 15-7-2010 after serving charge sheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named operator is entitled to from the concerned management?”

2. Briefly the case of the petitioner is that he was engaged by the respondent company w.e.f. 13.9.2005 and worked as such till 15.7.2010 continuously. His services had been terminated on 15.7.2010 without assigning any reason and without complying with the mandatory provisions

of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). On 26.8.2009, the petitioner along-with other workers came to the factory for work but the security officer stopped them to enter the factory and the gate of the factory was closed. The suspension order of the petitioner and other workers had already been pasted on the factory gate. On 26.8.2009, when the company had not allowed the petitioner and other workers to enter the factory, they made a joint complaint to the Labour Officer, Baddi upon which Labour Inspector came in the factory and made the inspection and summoned the respondent to his office for conciliation on 27.8.2009 on which date one official of the respondent handed over the letter of the company to the Labour Inspector. On 28.9.2009, on the intervention of the Labour Inspector all other workers except the suspended workers including petitioner were allowed by the respondent company to work. It is further asserted that on 5.9.2009, the petitioner received the chargesheet from the respondent which was replied by him and thereafter the enquiry was conducted which was not fair and on the report of enquiry officer, the petitioner was asked to file the comments to the show cause and after receiving the reply of the petitioner, his services had been terminated. The petitioner never instigated any worker to go on strike and did not cause the loss to the company in any manner. The enquiry officer right from very beginning started favouring the respondent, who used to right down the things which favoured the company. The petitioner also gave in writing against the enquiry officer but the same was not accepted. The enquiry officer had not allowed the petitioner to lead his evidence. The enquiry officer had not conducted the enquiry in fair manner and had also not followed the principle of natural justice. The termination of the petitioner is illegal and violative of the provisions of the Industrial Disputes Act, 1947.

3. By filing reply, the respondent averred that on 21.8.2009, the petitioner along-with other workers stopped work at about 3.00 P.M. and had not allowed anyone to perform duty. On 24.8.2009, a notice regarding wage increment was put on the notice board and at around 5.00 P.M. the petitioner went to the office of the Personal Manager and used derogatory language against senior official and threatened that they would not allow to run the factory, if the increment would not be given as per their demands, hence the petitioner was suspended from his duty vide letter dated 25.8.2009. On 26.8.2009, the suspension order was given to the petitioner, who refused to accept the same and the same were sent through post and copies were affixed on the main gate of the factory. It is further stated that the petitioner along-with other suspended workers stopped the ingress and egress of the factory and in concerted manner stopped other workers from reporting for duty and as such the petitioner separately and also along-with other workmen committed grave misconduct and a chargesheet dated 5.9.2009 was issued to him and when the reply filed by the petitioner was not found satisfactory, the management decided to hold domestic enquiry in to the matter and constituted the enquiry jointly *vide* letter dated 14.9.2009. Shri Krishna Mohan Tripathi was appointed as an enquiry officer who conducted the enquiry. The enquiry officer was independent and impartial person who conducted the enquiry in fair and proper manner by following the principles of natural justice. The show cause notice was sent to the petitioner against proposed punishment of dismissal along-with the enquiry report and thereafter the petitioner was dismissed from the employment *vide* letter dated 15.7.2010. Since, all the charges leveled against the petitioner, stood proved, his services had been terminated.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent. *Vide* order dated 20.7.2013, this Court framed the following preliminary issues:

- (1) Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ..OPP.

5. Thereafter, *vide* order dated 2.12.2015, this Court decided the preliminary issue in favour of the petitioner and against the respondent by holding as under:

“In view of my foregoing findings on preliminary issue, the enquiry conducted by the enquiry officer *vide* Ex. RW-1/B, is violative of principle of natural justice, hence, is hereby set aside and quashed.

6. Since, the preliminary issue was answered against the respondent, hence, on the basis of pleadings of the parties, the following issues were framed by this Court on 2.12.2015 and the respondent was afforded opportunity to lead evidence on merits in order to prove the alleged misconduct of the petitioner.

- (1) Whether the petitioner has committed the misconduct as alleged in the chargesheet dated 5.9.2009 issued by the respondent? ...*OPR*.
- (2) If issue No. 1 is proved in affirmative, whether the dismissal of the petitioner is legal and justified? ...*OPR*.
- (3) If issue No.1 is not proved in affirmative, then to what service benefits the petitioner is entitled to? ...*OPP*.
- (4) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No

Issue No. 2 : No

Issue No. 3 : Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief : Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2:

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. In order to prove issue No.1, the respondent has examined four RWs. Shri Bal Mohan Sharma HR/Admn. Manager appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice dated 10.8.2009 Ex. R-1, notice dated 21.8.2009 Ex. R-2, letter to Labour Officer Baddi Ex. R-3, notice dated 25.8.2009 Ex. R-4, letter to SHO Ex. R-5, notice dated 27.8.2009 Ex. R-6, letter to SHO dated 27.8.2009 Ex. R-7, letter dated 28.8.2009 Ex. R-8, letter dated 29.8.2009 Ex. R-9, notice dated 21.2.2008 Ex. R-10, notice dated 22.2.2008 Ex. R-11, notice dated 23.2.2008 Ex. R-12, chargesheet dated 5.9.2009 Ex. R-13, settlement dated 3.3.2008 Ex. R-14 and letter dated 29.8.2016 to S.P Baddi Ex. R-15. In cross- examination, he admitted that the

petitioner was engaged as a helper and he worked continuously till the date of his termination. He further admitted that the demand notice was raised by the workers in the year, 2009 for increase in the wages. He denied that the workers had worked throughout the day on 21.8.2009. He admitted that on 24.8.2009, the respondent had ordered the increase in the wages of the workers. He denied that on 25.8.2009, all the workers were stopped by the respondent at the main gate of the factory. He further denied that the workers never went on strike in the month of August, 2009. He admitted that no show cause notice was issued to the petitioner prior to the issuance of suspension order dated 26.8.2009. He denied that the work and conduct of the petitioner remained always satisfactory. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that regular workers were stopped by the respondent and contractual workers were allowed to work in the month of August, 2009. He also denied that the petitioner had never instigated any worker to go on strike. He admitted that the labour inspector visited the factory on 28.8.2009 and all the workers except the chargesheeted workers including the petitioner were allowed to resume the duties. He denied that false charges have been leveled against the petitioner to remove him from the job illegally. He further denied that the petitioner had never indulged in any misconduct and illegal activity. He admitted that the petitioner had completed 240 days in preceding twelve months.

11. Shri Arun Thakur, HR Officer stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he also reiterated almost all the averment as made in the reply. In cross-examination, he denied that the petitioner along-with other chargesheeted workers were not addressing the workers on 21.8.2009 and have never raised any slogans in the factory premises against the management. He denied that the workers had raised a demand to increase their wages. He further denied that the workers never went on strike on 21 and 25 to 27.8.2009. He also denied that the petitioner and other chargesheeted workers have never instigated any worker to go on strike. He denied that the respondent had stopped the workers at the main gate of the factory from doing the work. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that the Labour Inspector had visited the factory in the month of August, 2009 and found the management at fault. He admitted that the petitioner and other chargesheeted workers used to raise the demands of the workers before the management. He denied that the petitioner had never indulged in any misconduct and illegal activity.

12. RW-3 Shri Dalip Singh, Packing Manager also tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he stated similar facts as stated by RW-1 and RW-2 in their cross- examination.

13. Shri Surinder Singh Bisht, Labour Inspector, Baddi appeared into the witness box as RW-4 to depose that he has not brought the summoned record as there is no such record found in their office. He further stated that notice Ex. R-1 was signed by Shri Puran Chand Thakur, the then Labour Inspector, Baddi. In cross-examination, he admitted that a file is maintained in their office regarding the conciliation proceedings of any case. He further admitted that in the notice Ex. R-1, it has not been requested to their office to initiate conciliation Proceedings.

14. On the other hand the petitioner examined Shri Harmeet Singh as PW-1, who deposed that he had worked as an operator with the respondent from the year, 2006 till the year, 2010. He further deposed that he was present in the factory on 21.8.2009 and the petitioner had never stopped him or any other worker from doing the duty and on 24.8.2009, he was also present in the factory and the petitioner had never misbehaved with any official on that day and had never used any foul

language against any of the official. He also stated that the petitioner and other office bearers of the union used to espouse the cause of the workers before the management including the enhancement of bonus and the services of the petitioner were terminated as he along-with other office bearers of the union raised the demands of the workers. In cross-examination, he denied that on 10.8.2009, all the workers have gathered outside the canteen and stopped the work with the demand to raise their salary. He further denied that the petitioner along-with other workers namely Rakesh Kumar, Vikram, Surjit Kumari, Surender Pal, Mohan Lal, Sandeep Kumar and Prithi Chand were leading and instructing the other workers to go on illegal strike. He also denied that on 21.8.2009 at about 3.00 P.M., the workers have stopped the work at the instance of the petitioner and aforesaid workers. He denied that on 23rd and 24th August, 2009, the workers slowed down the production. He further denied that the workers were not allowed to enter inside the factory by the petitioner and aforesaid workers from 25.8.2009 to 28.8.2009.

15. The petitioner himself appeared into the witness box as PW-2 and tendered in evidence his affidavit Ex. P-1. In cross-examination, he denied that on 21.2.2008, the workers went on the strike. He further denied that no notice of strike was given to the management. He also denied that on 21.2.2008, he along-with other workers namely Sandeep Kumar, Surender Pal, Surjeet Kumari, Mohan Lal and Vikram instigated the other workers to go on strike. He denied that they had told the management if their wages were not increased then they will not allow to run the factory. He admitted that prior to 21.2.2008, they have raised a demand charter on which the Labour Inspector-cum-Conciliation Officer started the conciliation proceedings and the said proceedings were pending on 21.2.2008. He denied that after 21.2.2008 a chargesheet was issued to him and aforesaid workers and were suspended. He further denied that after the settlement Ex. R-14 they were taken back in service and the chargesheet was dropped. He also denied that on 10.8.2009 at about 1:30 PM, he along-with the aforesaid workers instigated all the workers to stop the work. He denied that on 21.8.2009, at about 3.00 P.M. the workers have stopped the production on their instigation and thereafter the senior officials of the company had counseled them and told them that their demands would be considered. He admitted that on 26.8.2009, he along-with aforesaid workers were suspended and notice to this effect was affixed at the factory gate. He denied that when the conciliation could not materialize on 27.8.2009, then they have threatened Bal Mohan Sharma, Manager, HR with dire consequences out-side the office of Labour Inspector. He further denied that on 28.8.2009, they had continued the illegal strike. He also denied that chargesheet Ex. R-13 was issued to him. He denied that he was dismissed from service due to the charges leveled in the chargesheet Ex. R-13.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner was issued a chargesheet dated 5.9.2009 and since the explanation submitted by the petitioner was not found satisfactory by the respondent, a domestic enquiry was ordered to be conducted and accordingly Mr. K. M. Tripathi, Advocate was appointed as an enquiry officer to enquire into the charges leveled against him in respect of the chargesheet. After the conclusion of enquiry, the enquiry officer had submitted his report. On the receipt of the enquiry report by the enquiry officer and after the satisfaction of the respondent that the charges leveled against the petitioner stood proved in the enquiry, the respondent concurred with the findings of the enquiry officer, as such the copy of the enquiry report along-with show cause notice was issued to the petitioner to the proposed punishment of dismissal and thereafter the petitioner was dismissed from the employment of the respondent company *vide* letter dated 15.7.2010. However, *vide* order dated 2.12.2015, this Court had set aside and quashed the enquiry conducted by the enquiry officer being violative of principles of natural justice and the respondent was afforded opportunity to lead evidence on merits in order to prove the misconduct as alleged in the chargesheet dated 5.9.2009 against the petitioner. At this stage, it would be pertinent to reproduce the chargesheet dated 5.9.2009 Ex. R-13 issued against the petitioner with respect to the alleged misconduct which is in Hindi and the same reads as under:

“आप पर आरोप है कि आप ने अपने सहकर्मियों सर्वश्री मोहन लाल, राम चन्द, सुरेन्द्र पाल, सुरजीत कुमारी, राकेश कुमार, संदीप कुमार, विक्रम, पृथी चन्द तथा निर्मल कुमार के साथ मिलकर एक राय होकर दिनांक 21.8.09 को बिना सूचना के लगभग 3.00 बजे अचानक काम रोक दिया और ठेकेदार के श्रमिकों को भी कार्य नहीं करने दिया जिसके लिये प्रबंधकों ने नोटिस भी जारी किया कि आप लोग “काम नहीं तो वेतन नहीं” के आधार पर उस अवधि के वेतन के अधिकारी नहीं हैं।

दिनांक 24.08.09 को प्रबंधकों ने वेतन वृद्धि घोषित की जिसका घोषणा पत्र नोटिस बोर्ड पर लगाया गया। आप 24.08.09 को लगभग 5.00 बजे पर्सनल मैनेजर के कार्यालय में गये और कहा कि ये क्या इंक्रीमेंट दे रहे हो, आपने पुनः कहा कि गोयल को बता देना कि अगर हमारी मांग के मुताबिक इंक्रीमेंट नहीं देगा तो फ़ैक्ट्री चलने नहीं देंगे। आपको श्री बालमोहन ने कहा कि आप इस तरह अभद्र तरीके से न बोलें और जाकर अपना कार्य करें तो आपने उससे कहा कि तुम अपने काम से काम रखो हमें मत समझाओ। दिनांक 25.08.09 को आप अनुपस्थित रहे आपके द्वारा 21.08.09 और 24.08.09 को किये गये दुराचरणों के लिये प्रबंधकों ने अपने पत्र दिनांक 25.08.09 के द्वारा कार्य से निलम्बित कर दिया। आपको निलम्बन आदेश दिनांक 26.08.09 को सुबह लगभग 8.30 बजे फ़ैक्ट्री गेट पर दिया गया लेकिन आपने निलम्बन आदेश पढ़कर उसे लेने से मना कर दिया तदोपरांत निलम्बन आदेश को गेट पर लगा दिया गया। फिर आपने अपने अन्य सहकर्मियों के साथ मिलकर एकराय होकर कार्य पर आ रहे दूसरे श्रमिकों को कार्य पर जाने से रोक दिया तथा धमकाया कि जो कार्य पर जायेगा उसके हाथ पैर तोड़ दिये जाएंगे जिसके कारण कार्य पर जाना चाह रहे श्रमिक भी आप लोगों की धमकियों से डरकर कार्य पर नहीं गये। आप अपने अन्य सहकर्मियों के साथ गेट के बाहर हड़ताल पर जाने के लिए श्रमिकों को उकसाते भड़काते रहे। आप और आपके अन्य सहकर्मियों द्वारा हड़ताली श्रमिकों को हड़ताल जारी रखने के लिये उकसाने भड़काने के कारण हड़ताली श्रमिक प्रबंधकों द्वारा बार-बार समझाने पर भी हड़ताल समाप्त कर ड्यूटी पर वापस नहीं आये और वे इस बात पर अड़े रहे कि जब तक निलम्बित श्रमिकों का निलम्बन वापस नहीं लिया जाता कोई भी ड्यूटी पर नहीं जाएगा और हड़ताल जारी रखी। आपने अपने अन्य सहकर्मियों के साथ उपरोक्त दिनांकों में यह भी धमकी दी कि आप लोग कम्पनी नहीं चलने देंगे जो भी काम पर जायेगा उसे मारेंगे पीटेंगे और देखेंगे कि फ़ैक्ट्री से कैसे बाहर निकलते हैं। दिनांक 27.08.09 को संराधन कार्यवाही के दौरान आपने अपने अन्य निलम्बित श्रमिकों के साथ संराधन कार्यवाही में भाग लेने गये कम्पनी के अधिकारी को धमकी दी कि उन्हें लेबर आफिस से बाहर नहीं जाने देंगे एवं उनकी गाड़ी भी तोड़ दी जाएगी जिसकी सूचना पुलिस विभाग को भी दी गई थी। आप सभी के उपरोक्त कार्य गम्भीर दुराचरण हैं आपको आदेश है कि आप इस आरोप पत्र की प्राप्ति के तीन दिन के अन्दर उत्तर दें कि क्यों न आपके विरुद्ध अनुशासनात्मक कार्यवाही की जाये। अगर आपका उत्तर निर्धारित समय में प्राप्त नहीं हुआ तो यह समझा जायेगा कि आप को आरोप स्वीकार हैं तथा तदनुसार कार्यवाही की जायेगी। मामले के अन्तिम निपटारे तक आपका निलम्बन आदेश प्रभावी रहेगा।”

17. Now, the question which arises for consideration before this Court is as to whether the respondent has been able to prove the misconduct allegedly committed by the petitioner as per the aforesaid chargesheet. The first charge against the petitioner is that on 21.8.2009, at about 3.00 P.M., the petitioner along-with the other co-workers stopped the workers of the factory including the workers of the contractor from doing the work for which the management had also issued the notice to the workers that they would not be entitled for the wages for the period during which they had not worked on the principle of “no work, no wage”. However, to prove the aforesaid charge, except for the statements of RW-1, RW-2 and RW-3, no other cogent and satisfactory evidence on record has been led by the respondent. Though, RW-1 has tendered in evidence notice dated 21.8.2009, Ex. R-2 but no reliance can be placed upon the same because a copy of the same has also been allegedly endorsed to the Labour Department but neither any record nor any witness from the Labour Department has been produced by the respondent in order to prove that this notice was also sent to the Labour Department. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. The petitioner has specifically denied in cross-examination that on 21.8.2009 at 3.00 P.M. the workers have stopped the work on their instigation. Neither any independent witness nor any worker of the factory or any worker of the contractor has been examined by the management to prove the aforesaid charge against the petitioner. Therefore, in the absence of any cogent and satisfactory

evidence on record, the aforesaid charge has not been proved by the respondent against the petitioner.

18. The second charge against the petitioner is that on 24.8.2009, the management had announced the increment of the wages of the workers for which a notice was also affixed on the notice board and on the same date at about 5.00 P.M., the petitioner went to the office of Personnel Manager and told him that if the increment was not granted as per the demands of the workers then they would not allow to run the factory and he had also misbehaved with Mr. Bal Mohan. However, RW-1 Bal Mohan in his evidence by way of affidavit Ex. RW- 1/A has not uttered even a single word that on 24.8.2009, the petitioner had misbehaved with him. In fact none of the witnesses of the respondent has uttered even a single word in their affidavits that on 24.8.2009, the petitioner had entered inside the office of the Personal Manager and misbehaved with Mr. Bal Mohan. To this effect, no evidence has been produced on record by the respondent. Therefore, in the absence of any evidence on record, the aforesaid charge against the petitioner has also not been proved by the respondent.

19. The next charge against the petitioner is that on 25.8.2009, the petitioner was suspended and on 26.8.2009 at 8.30 A.M. he refused to receive the suspension order and thereafter the copy of the same was pasted on the factory gate and on 26.8.2009 the petitioner along-with his co-workers have stopped the workers from doing the work. Further charge against the petitioner is that on 27.8.2009, after the conclusion of the conciliation proceedings the petitioner and other suspended workers had threatened the official of the company who had attended the conciliation proceedings for which a complaint was also made to the Police. He had also been charged that due to his instigation, the workers continued their illegal strike *w.e.f.* 26.8.2009 to 28.8.2009. To prove the aforesaid charges, the respondent has examined RW-1 to RW-3, however, no cogent and satisfactory evidence has been led by the respondent to prove the aforesaid charges leveled against the petitioner. RW-1 stated in cross-examination that the respondent had made the complaint Ex. R-8 to the Labour Officer, Baddi regarding the illegal strike and also to the Labour Commissioner *vide* letter Ex. R-6, however, the respondent has failed to prove that the letter Ex. R-6 was sent to the Labour Commissioner. RW-1 admitted in cross-examination that the letter Ex. R-6 might have been sent through registered post but the postal receipt *qua* the same was not annexed. Though, RW-1 has stated that the letter Ex. R-8 was sent to the Labour Officer by hand but admittedly there is no endorsement/receipt of Labour Officer on the letter Ex. R-8. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the letters Ex. R-6 and Ex. R-8 regarding the illegal strike were received by the Labour Officer and Labour Commissioner respectively. Similarly, no witness from the Police Station Barotiwala has been examined and no record of Police Station Barotiwala has been produced before this Court in order to prove the letter Ex. R-7 written to the SHO Police Station Barotiwala regarding the illegal strike of the workers. There is also nothing on record to show that what action has been taken by the Police Station Barotiwala upon the letter Ex. R-7. RW-1 also admitted in cross-examination that they have not made any complaint to the Police regarding the threat given by the workers after the conciliation proceedings on 27.8.2009. Furthermore, RW-1 to RW-3 admitted in their cross-examination that the management had not received any complaint from the contractor regarding the stopping of work by the petitioner and other suspended workers. RW-2 also admitted that the other workers have not made any complaint in writing that they had been stopped by the petitioner for doing the work and to go on strike. Similarly, there is no evidence on record to suggest that during the period of alleged strike there was no production in the factory. RW-1 admitted that the respondent had not annexed any record of "no production" in the factory on 21.8.2009 and from 25.8.2009 to 27.8.2009. Though, RW-1 to RW-3 stated in cross-examination that they had deducted the wages of the workers for the period of strike but admittedly no record has been produced by the respondent regarding the deduction of wages during the period of strike and no record has been produced regarding the fact that the goods have not been delivered to the dealers during the period of strike.

Neither any independent witness nor any worker has been examined to prove the aforesaid charge against the petitioner. Even the contractor was not produced in the witness box in order to prove that his workers were stopped from doing the work by the petitioner. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charges against the petitioner has not been proved. Hence, I have no hesitation in holding that the respondent has failed to prove that due to the instigation of the petitioner, the workers continued their illegal strike from 26.8.2009 to 28.8.2009 and had threatened the official of the company.

20. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the respondent has failed to prove the misconduct against the petitioner as alleged in the chargesheet dated 5.9.2009 Ex. R-13 issued by the respondent. Hence, the dismissal of the services of the petitioner on the basis of the aforesaid chargesheet is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue No. 3:

21. Since, I have held under issues No.1&2 above that the dismissal of the services of the petitioner by the respondent *w.e.f.* 15.7.2010 on the basis of chargesheet dated 5.9.2009 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) S LJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the dismissal of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C. Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his dismissal. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his dismissal. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back- wages. Accordingly, issue No. 3 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 20 of 2011

Instituted on 13-6-2011

Decided on 8-5-2018

Surender Pal s/o Shri Dhannu Ram r/o Village Chattipura, P.O. Barotiwala, Tehsil Baddi,
District Solan, H.P. *..Petitioner.*

V/S.

M/s Biogenetic Drugs Pvt. Ltd., Village Jharmajri, Baddi, District Solan, H.P. through its
Managing Director. *..Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate

For respondent : Shri Rajiv Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether the dismissal of the services of Shri Surender Pal s/o Shri Dhannu Ram, helper, by the Managing Director, M/s Biogenetic Drugs Private Limited, Village Jharmazri, Baddi, District Solan, H.P. w.e.f. 27.3.2010 after serving charge sheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named helper is entitled to from the concerned management?”

2. Briefly the case of the petitioner is that he was engaged by the respondent company w.e.f. 25.5.2005 and worked as such till 27.3.2010 continuously. His services had been terminated on 27.3.2010 without assigning any reason and without complying with the mandatory provisions

of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). On 25.8.2009, the respondent company asked the petitioner and other workers to leave the factory and did not allow them to work in the factory and only the workmen employed through contractor had been allowed to work. On 26.8.2009, the petitioner along-with other workers came to the factory for work but the security officer stopped them to enter the factory and the gate of the factory was closed. The suspension order of the petitioner and other workers had already been pasted on the factory gate. On 26.8.2009, when the company had not allowed the petitioner and other workers to enter the factory, they made a joint complaint to the Labour Officer, Baddi upon which Labour Inspector came in the factory and made the inspection and summoned the respondent to his office for conciliation on 27.8.2009 on which date one official of the respondent handed over the letter of the company to the Labour Inspector. On 28.9.2009, on the intervention of the Labour Inspector all other workers except the suspended workers including petitioner were allowed by the respondent company to work. It is further asserted that on 5.9.2009, the petitioner received the joint chargesheet from the respondent which was replied by him and thereafter the enquiry was conducted which was not fair and on the report of enquiry officer, the petitioner was asked to file the comments to the show cause and after receiving the reply of the petitioner, his services had been terminated. The petitioner never instigated any worker to go on strike and did not cause the loss to the company in any manner. The enquiry officer right from very beginning started favouring the respondent, who used to right down the things which favoured the company. The petitioner also gave in writing against the enquiry officer but the same was not accepted. The enquiry officer had not allowed the petitioner to lead his evidence. The enquiry officer had not conducted the enquiry in fair manner and had also not followed the principle of natural justice. The termination of the petitioner is illegal and violative of the provisions of the Industrial Disputes Act, 1947.

3. By filing reply, the respondent averred that on 21.8.2009, the petitioner along-with other workers stopped work at about 3.00 P.M. and had not allowed anyone to perform duty. On 25.8.2009, the petitioner along-with other leading workers entered the factory and went to different departments and instigated other workmen to stop their work and resort to strike and as such the petitioner along-with other leading workmen who committed grave misconducts were suspended from duty *vide* letter dated 25.8.2009. On 26.8.2009, the suspension order was given to the petitioner and seven other employees, who refused to accept the same and the same were sent through post and copies were affixed on the main gate of the factory. It is further stated that the petitioner along-with other workmen committed grave misconduct for which they were suspended from the duty and a joint chargesheet dated 5.9.2009 was issued to them and when the reply filed by the petitioner was not found satisfactory, the management decided to hold domestic enquiry into the matter and constituted the enquiry jointly *vide* letter dated 14.9.2009. Shri Krishna Mohan Tripathi was appointed as an enquiry officer who conducted the enquiry. The enquiry officer was independent and impartial person who conducted the enquiry in fair and proper manner by following the principles of natural justice. The show cause notice was sent to the petitioner against proposed punishment of dismissal along-with the enquiry report and thereafter the petitioner was dismissed from the employment *vide* letter dated 27.3.2010. Since, all the charges leveled against the petitioner, stood proved, his services had been terminated.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent. *Vide* order dated 20.7.2013, this Court framed the following preliminary issues:

- (1) Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ..*OPP*.

5. Thereafter, *vide* order dated 2.12.2015, this Court decided the preliminary issue in favour of the petitioner and against the respondent by holding as under:

“In view of my foregoing findings on preliminary issue, the enquiry conducted by the enquiry officer vide Ex. RW-1/B, is violative of principle of natural justice, hence, is hereby set aside and quashed.

6. Since, the preliminary issue was answered against the respondent, hence, on the basis of pleadings of the parties, the following issues were framed by this Court on 2.12.2015 and the respondent was afforded opportunity to lead evidence on merits in order to prove the alleged misconduct of the petitioner.

- (1) Whether the petitioner has committed the misconduct as alleged in the chargesheet dated 5.9.2009 issued by the respondent? ..OPR.
- (2) If issue No.1 is proved in affirmative, whether the dismissal of the petitioner is legal and justified? ..OPR.
- (3) If issue No.1 is not proved in affirmative, then to what service benefits the petitioner is entitled to? ..OPP.
- (4) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

Issue No.1 : No

Issue No. 2 : No

Issue No. 3 : Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief : Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. In order to prove issue No.1, the respondent has examined four RWs. Shri Bal Mohan Sharma HR/Admn. Manager appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice dated 10.8.2009 Ex. R-1, notice dated 21.8.2009 Ex. R-2, letter to Labour Officer Baddi, Ex. R-3, notice dated 25.8.2009 Ex. R-4, letter to SHO Ex. R-5, notice dated 28.8.2009 Ex. R-6, letter dated 27.8.2009 Ex. R-7, letter dated 28.8.2009 Ex. R-8, letter dated 29.8.2009 Ex. R-9, notice dated 21.2.2008 Ex. R-10, notice dated 22.2.2009 Ex. R-11, notice dated 23.2.2008 Ex. R-12, chargesheet dated 5.9.2009 Ex. R-13, settlement dated 3.3.2008 Ex. R-14 and letter dated 29.8.2016 to S.P. Baddi Ex. R-15. In cross-examination, he admitted that the petitioner

was engaged as a helper and he worked continuously till the date of his termination. He further admitted that the demand notice was raised by the workers in the year, 2009 for increase in the wages. He denied that the workers had worked throughout the day on 21.8.2009. He admitted that on 24.8.2009, the respondent had ordered the increase in the wages of the workers. He denied that on 25.8.2009, all the workers were stopped by the respondent at the main gate of the factory. He further denied that the workers never went on strike in the month of August, 2009. He admitted that no show cause notice was issued to the petitioner prior to the issuance of suspension order dated 26.8.2009. He denied that the work and conduct of the petitioner remained always satisfactory. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that regular workers were stopped by the respondent and contractual workers were allowed to work in the month of August, 2009. He also denied that the petitioner had never instigated any worker to go on strike. He admitted that the labour inspector visited the factory on 28.8.2009 and all the workers except the chargesheeted workers including the petitioner were allowed to resume the duties. He denied that false charges have been leveled against the petitioner to remove him from the job illegally. He further denied that the petitioner had never indulged in any misconduct and illegal activity. He admitted that the petitioner had completed 240 days in preceding twelve months.

11. Shri Arun Thakur, HR Officer stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he also reiterated almost all the averment as made in the reply. In cross-examination, he denied that the petitioner along-with other chargesheeted workers were not addressing the workers on 21.8.2009 and have never raised any slogans in the factory premises against the management. He denied that the workers had raised a demand to increase their wages. He further denied that the workers never went on strike on 21 and 25 to 27.8.2009. He also denied that the petitioner and other chargesheeted workers have never instigated any worker to go on strike. He denied that the respondent had stopped the workers at the main gate of the factory from doing the work. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that the Labour Inspector had visited the factory in the month of August, 2009 and found the management at fault. He admitted that the petitioner and other chargesheeted workers used to raise the demands of the workers before the management. He denied that the petitioner had never indulged in any misconduct and illegal activity.

12. RW-3 Shri Dalip Singh, Packing Manager also tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he stated similar facts as stated by RW-1 and RW-2 in their cross- examination.

13. Shri Surinder Singh Bisht, Labour Inspector, Baddi appeared into the witness box as RW-4 to depose that he has not brought the summoned record as there is no such record found in their office. He further stated that notice Ex. R-1 was signed by Shri Puran Chand Thakur, the then Labour Inspector, Baddi. In cross-examination, he admitted that a file is maintained in their office regarding the conciliation proceedings of any case. He further admitted that in the notice Ex. R-1, it has not been requested to their office to initiate conciliation Proceedings.

14. On the other hand the petitioner examined Shri Harmeet Singh as PW-1, who deposed that he had worked as an operator with the respondent from the year, 2006 till the year, 2010. He further deposed that he was present in the factory on 21.8.2009 and the petitioner had never stopped him or any other worker from doing the duty and on 24.8.2009, he was also present in the factory and the petitioner had never misbehaved with any official on that day and had never used any foul language against any of the official. He also stated that the petitioner and other office bearers of the

union used to espouse the cause of the workers before the management including the enhancement of bonus and the services of the petitioner were terminated as he along-with other office bearers of the union raised the demands of the workers. In cross- examination, he denied that on 10.8.2009, all the workers have gathered outside the canteen and stopped the work with the demand to raise their salary. He further denied that the petitioner along-with other workers namely Raghuvir, Vikram, Mohan Lal, Surjit Kumari, Sandeep Kumar, Prithi Chand and Rakesh Kumar were leading and instructing the other workers to go on illegal strike. He also denied that on 21.8.2009 at about 3.00 P.M., the workers have stopped the work at the instance of the petitioner and aforesaid workers. He denied that on 23rd and 24th August, 2009, the workers slowed down the production. He further denied that the workers were not allowed to enter inside the factory by the petitioner and aforesaid workers from 25.8.2009 to 28.8.2009.

15. The petitioner himself appeared into the witness box as PW-2 and tendered in evidence his affidavit Ex. P-1. In cross-examination, he denied that on 21.2.2008, the workers went on the strike. He further denied that no notice of strike was given to the management. He also denied that on 21.2.2008, he along-with other workers namely Sandeep Kumar, Raghubir, Surjeet Kumari, Mohan Lal, Mohan Lal and Vikram instigated the other workers to go on strike. He denied that they had told the management if their wages were not increased then they will not allow to run the factory. He admitted that prior to 21.2.2008, they have raised a demand charter on which the Labour Inspector-cum-Conciliation Officer started the conciliation proceedings and the said proceedings were pending on 21.2.2008. He denied that on 21.2.2008 a chargesheet was issued to him and aforesaid workers and were suspended. He further denied that after the settlement Ex. R-14 they were taken back in service and the chargesheet was dropped. He also denied that on 10.8.2009 and at about 1.30 P.M., he along-with the aforesaid workers instigated all the workers to stop the work. He denied that on 21.8.2009, at about 3.00 P.M., the workers have stopped the production on their instigation and thereafter the senior official of the company had counseled them and told them that their demands would be considered. He admitted that on 26.8.2009, he along-with aforesaid workers were suspended and notice to this effect was affixed at the factory gate. He expressed his ignorance that the conciliation proceedings were held on 27.8.2009. He denied that chargesheet Ex. R-13 was issued to him. He further denied that he was dismissed from service due to the charges leveled in the chargesheet Ex. R-13.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner along-with other workers were issued joint chargesheet dated 5.9.2009 and since the explanation submitted by the petitioner was not found satisfactory by the respondent, a domestic enquiry was ordered to be conducted and accordingly Mr. K. M. Tripathi, Advocate was appointed as an enquiry officer to enquire into the charges leveled against them in respect of joint chargesheet. After the conclusion of enquiry, the enquiry officer had submitted his report dated 5.2.2010, Ex. RW-1/B. On the receipt of the enquiry report by the enquiry officer and after the satisfaction of the respondent that the charges leveled against the petitioner and other co-workers stood proved in the enquiry, the respondent concurred with the findings of the enquiry officer, as such the copy of the enquiry report along- with show cause notice was issued to the petitioner and other co-workers to the proposed punishment of dismissal and thereafter the petitioner along-with his co-workers were dismissed from the employment of the respondent company *vide* letter dated 27.3.2010. However, *vide* order dated 2.12.2015, this Court had set aside and quashed the enquiry conducted by the enquiry officer being violative of principles of natural justice and the respondent was afforded opportunity to lead evidence on merits in order to prove the misconduct as alleged in the chargesheet dated 5.9.2009 against the petitioner. At this stage, it would be pertinent to reproduce the joint chargesheet dated 5.9.2009 Ex. R-13 issued against the petitioner and other workers namely Mohan Lal, Rakesh Kumar, Vikram, Nirmal Kumar, Ram Chand, Ms. Surjit Kumari, Sandeep Kumar and Prithi Chand with respect to the alleged misconduct which is in Hindi and the same reads as under :

“आप पर आरोप है कि आप लोगों ने दिनांक 21-8-2009 को बिना सूचना एक साथ मिलकर तथा एक राय होकर लगभग 3 बजे अचानक काम रोक दिया और ठेकेदार के श्रमिकों को भी काम नहीं करने दिया जिसके लिए प्रबंधकों ने नोटिस भी जारी किया कि आप लोग “काम नहीं तो वेतन नहीं” के आधार पर उस अवधि के वेतन के अधिकारी नहीं हैं।

दिनांक 24-8-2009 को प्रबंधकों ने वेतन वृद्धि घोषित की जिसका घोषित पत्र नोटिस बोर्ड पर लगाया गया।

आप सभी दिनांक 25-8-2009 को सुबह फैक्ट्री के अंदर आये परन्तु अपने कार्य स्थल पर नहीं पहुंचे। आप लोगों ने कार्य स्थल छोड़कर अन्य विभागों में जाकर श्रमिकों को काम न करने के लिए उकसाया एवं भड़काया। आप लोगों ने अपना कार्य शुरू नहीं किया। आप लोगों के उकसाने एवं भड़काने से अन्य श्रमिकों ने आप लोगों की अगुवाई में, फैक्ट्री के अंदर रहकर बिना सूचना अनुचित एवं गैरकानूनी हड़ताल की। प्रबंधकों के द्वारा आप लोगों को समझाया गया कि आप लोग श्रमिकों को अनुचित एवं गैरकानूनी हड़ताल के लिए न उकसायें और हड़ताल समाप्त कर काम पर वापस आयें क्योंकि इससे उत्पादन का भी नुकसान हो रहा है। प्रतिष्ठान की आर्थिक हालत पहले से खराब है लेकिन आप लोगों ने प्रबंधकों का कहना नहीं माना और आप सभी ने न केवल कम्पनी के श्रमिकों को बल्कि ठेकेदार के श्रमिकों को भी काम नहीं करने दिया। दोपहर के बाद आप लोगों ने उन श्रमिकों के साथ हाथापाई की जो फैक्ट्री में बना हुआ तैयार माल डिलीवरी के लिए ले जा रहे थे और आप लोगों ने तैयार माल फैक्ट्री से बाहर नहीं जाने दिया तथा धमकी दी कि जो भी माल बाहर लेकर जायेगा उसके हाथ पैर तोड़ देंगे। शाम को अपनी पाली समाप्त होने के बाद आप सभी फैक्ट्री गेट के पास अंदर ही इकट्ठे हो गए और कहा कि आप लोग फैक्ट्री नहीं चलने देंगे। आप लोगों के उग्र एवं विध्वंसक रवैये को देखते हुए पुलिस बुलानी पड़ी। पुलिस के आने के बाद आप लोग फैक्ट्री से बाहर गये।

आप लोगों के द्वारा एक साथ मिलकर एवं एक राय होकर दिनांक 25-8-2009 को किये गए दुराचरणों के लिए प्रबंधकों ने आपको, अपने पत्र दिनांक 25-8-2009 द्वारा कार्य से निलंबित कर दिया। आप लोगों को निलंबन आदेश दिनांक 26-8-2009 को सुबह लगभग 8.30 बजे फैक्ट्री गेट पर दिया गया। लेकिन आप लोगों ने निलंबन आदेश पढ़ कर लेने से मना कर दिया तदोपरान्त निलंबन आदेशों को गेट पर लगा दिया गया। दिनांक 26-8-2009 को आप सभी निलंबित श्रमिकों ने गेट पर दूसरे श्रमिकों को भी रोक लिया तथा धमकाया कि जो काम पर जाएगा उसके हाथ पैर तोड़ दिए जाएंगे, जिसके कारण कुछ श्रमिक जो कार्य पर जाना चाहते थे वे भी आप लोगों की धमकियों की वजह से कार्य पर नहीं गए।

प्रबंधकों द्वारा समस्त हड़ताली श्रमिक को बार-बार समझाया गया परन्तु इसके बावजूद भी हड़ताली श्रमिक आप सभी के उकसाने व भड़काने पर हड़ताल समाप्त कर ड्यूटी पर उपस्थित नहीं हुए और वे इस बात पर अड़े रहे हैं कि जब तक निलंबित श्रमिकों का निलंबन वापस नहीं लिए जाता कोई भी ड्यूटी पर नहीं जाएगा और हड़ताल जारी रहेगी। आप लोगों तथा एक अन्य निलंबित श्रमिक श्री रघुवीर के साथ कुछ और श्रमिक भी दुराचरणों में लिप्त हुए। आप लोगों ने उपरोक्त दिनांक में यह भी धमकी दी कि आप लोग कम्पनी नहीं चलने देंगे, जो भी काम पर जाएगा उन्हें मारेंगे-पीटेंगे और देखते हैं कि कैसे फैक्ट्री से बाहर निकलते हैं।

दिनांक 27-8-2009 को संराधन कार्यवाही के दौरान आप सभी निलंबित श्रमिकों ने संराधन कार्यवाही समाप्त होने के समय, कम्पनी के अधिकारी को जो संराधन कार्यवाही में हिस्सा लेने गए थे, धमकी दी कि उन्हें लेबर ऑफिस से बाहर नहीं जाने देंगे एवं उनकी गाड़ी भी तोड़ दी जायेगी। जिसकी सूचना पुलिस विभाग को भी दी गयी थी। आप लोगों के उकसाने व भड़काने से दिनांक 25-8-2009 को दोनों पालियों के श्रमिक हड़ताल पर रहे और दिनांक 26-8-2009 से फैक्ट्री के बाहर रहकर अपनी अनुचित एवं गैरकानूनी हड़ताल दिनांक 28-8-2009 तक जारी रखी। आप सभी के उपरोक्त कार्य गंभीर दंडनीय दुराचरण है। आप को आदेश है कि आप इस आरोप पत्र की प्राप्ति के तीन दिन के अंदर उत्तर दें कि क्यों न आप के विरुद्ध अनुशासनात्मक कार्यवाही की जाए। अगर आप का उत्तर निर्धारित समय में प्राप्त नहीं हुआ तो यह समझा जाएगा कि आपको आरोप स्वीकार है तथा तदनुसार कार्यवाही की जायेगी।

मामले के अंतिम निपटारे तक आपका निलंबन आदेश प्रभावी रहेगा।”

17. Now, the question which arises for consideration before this Court is as to whether the respondent has been able to prove the misconduct allegedly committed by the petitioner as per the aforesaid chargesheet. The first charge against the petitioner is that on 21.8.2009, at about 3.00 P.M., the petitioner along-with the other co-workers named in the chargesheet stopped the workers of the factory including the workers of the contractor from doing the work for which the management had also issued the notice to the workers that they would not be entitled for the wages for the period during which they had not worked on the principle of “no work no wage”. However, to prove the aforesaid charge, except for the statements of RW-1, RW-2 and RW-3, no other cogent and satisfactory evidence on record has been led by the respondent. Though, RW-1 has tendered in evidence notice dated 21.8.2009, Ex. R-2 but no reliance can be placed upon the same because a copy of the same has also been allegedly endorsed to the Labour Department but neither any record nor any witness from the Labour Department has been produced by the respondent in order to prove that this notice was also sent to the Labour Department. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. The petitioner has specifically denied in cross-examination that on 21.8.2009 at 3.00 P.M. the workers have stopped the work on their instigation. Neither any independent witness nor any worker of the factory or any worker of the contractor has been examined by the management to prove the aforesaid charge against the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charge has not been proved by the respondent against the petitioner.

18. The second charge against the petitioner and other co-workers named in the chargesheet is that on 25.8.2009, the petitioner along-with his associates named in the chargesheet instigated all the workers of the factory including the workers of the contractor to go on strike as a result of which all the workers went on illegal strike and also manhandled some of the workers and threatened them with dire consequences as a result of which the Police had to be called. To prove the aforesaid charge, the respondent had examined RW-1 to RW-3 but except for their bald statements, no other evidence has been led by the respondent to prove the aforesaid charge against the petitioner. Neither any independent witness nor any factory worker has been examined by the respondent in order to prove the aforesaid charge against the petitioner. Moreover, no worker of the contractor has been produced in the witness box. Though, the charge against the petitioner is that due to the illegal strike, the police had to be called, however, no record from the Police Station has been produced before this Court. RW-1 has admitted in cross-examination that they had not made any complaint to the Police that the workers had stopped the ingress of the vehicles on 25.8.2009 into the factory. RW-1 also stated in cross-examination that a complaint was made to the Police, however, for the reasons best known to the respondent neither any witness from the Police station has been examined nor any record from the Police station has been produced. RW-1 has also tendered in evidence complaint dated 25.8.2009 Ex. R-5 allegedly written to the SHO Police Station Barotiwala for police protection, however, there is nothing on record as to what had happened thereafter and what action had been taken by the Police on the aforesaid complaint Ex. R-5. There is no evidence on record as to whether the Police had arrived at the factory and whether Police protection had been given on the complaint Ex. R-5. Similarly, RW-1 has tendered in evidence copy of complaint dated 25.8.2009 Ex. R-3 addressed to Labour Officer, Baddi regarding the illegal strike but no record from the office of Labour Officer Baddi has been produced before this Court. Therefore, in the absence of any record from the SHO Police Station Barotiwala and Labour Officer Baddi, no reliance can be placed upon the complaints Ex. R-3 & Ex. R-5. Hence, in the absence of any cogent and satisfactory evidence on record the aforesaid charge against the petitioner has also not been proved.

19. The next charge against the petitioner is that on 25.8.2009, the petitioner and other workers named in the chargesheet were suspended and on 26.8.2009 at 8.30 A.M. they refused to receive the suspension order and thereafter the copy of the same was pasted on the factory gate and

on 26.8.2009 all the suspended workers have stopped the workers from doing the work. Further charge against the petitioner is that on 27.8.2009, after the conclusion of the conciliation proceedings the petitioner and other suspended workers had threatened the officials of the company who had attended the conciliation proceedings for which a complaint was also made to the Police. They have also been charged that due to their instigation, the workers of both the shifts remained on illegal strike on 25.8.2009 and they continued their strike *w.e.f.* 26.8.2009 to 28.8.2009. To prove the aforesaid charges, the respondent has examined RW-1 to RW-3, however, no cogent and satisfactory evidence has been led by the respondent to prove the aforesaid charges leveled against the petitioner and other workers named in the chargesheet. RW-1 stated in cross-examination that the respondent had made the complaint Ex. R-8 to the Labour Officer, Baddi regarding the illegal strike and also to the Labour Commissioner *vide* letter Ex. R-6, however, the respondent has failed to prove that the letter Ex. R-6 was sent to the Labour Commissioner. RW-1 admitted in cross-examination that the letter Ex. R-6 might have been sent through registered post but the postal receipt *qua* the same was not annexed. Though, RW-1 has stated that the letter Ex. R-8 was sent to the Labour Officer by hand but admittedly there is no endorsement/receipt of Labour Officer on the letter Ex. R-8. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the letters Ex. R-6 and Ex. R-8 regarding the illegal strike were received by the Labour Officer and Labour Commissioner respectively. Similarly, no witness from the Police Station Barotiwala has been examined and no record of Police Station Barotiwala has been produced before this Court in order to prove the letter Ex. R-7 written to the SHO Police Station Barotiwala regarding the illegal strike of the workers. There is also nothing on record to show that what action has been taken by the Police Station Barotiwala upon the letter Ex. R-7. RW-1 also admitted in cross-examination that they have not made any complaint to the Police regarding the threat given by the workers after the conciliation proceedings on 27.8.2009. Furthermore, RW-1 to RW-3 admitted in their cross-examination that the management had not received any complaint from the contractor regarding the stopping of work by the petitioner and other suspended workers. RW-2 also admitted that the other workers have not made any complaint in writing that they had been stopped by the petitioner for doing the work and to go on strike. Similarly, there is no evidence on record to suggest that during the period of alleged strike there was no production in the factory. RW-1 admitted that the respondent had not annexed any record of “no production” in the factory on 21.8.2009 and from 25.8.2009 to 27.8.2009. Though, RW-1 to RW-3 stated in cross-examination that they had deducted the wages of the workers for the period of strike but admittedly no record has been produced by the respondent regarding the deduction of wages during the period of strike and no record has been produced regarding the fact that the goods have not been delivered to the dealers during the period of strike. Neither any independent witness nor any worker has been examined to prove the aforesaid charge against the petitioner and other workers named in the chargesheet. Even, the contractor was not produced in the witness box in order to prove that his workers were stopped from doing the work by the petitioner and other workers named in the chargesheet. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charges against the petitioner and other workers named in the chargesheet have not been proved. Hence, I have no hesitation in holding that the respondent has failed to prove that due to the instigation of the petitioner and other workers named in the chargesheet, the workers went on illegal strike from 25.8.2009 to 28.9.2009 and had threatened the officials of the company

20. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the respondent has failed to prove the misconduct against the petitioner as alleged in the chargesheet dated 5.9.2009 Ex. R-13 issued by the respondent. Hence, the dismissal of the services of the petitioner on the basis of the aforesaid chargesheet is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

21. Since, I have held under issues No.1&2 above that the dismissal of the services of the petitioner by the respondent *w.e.f.* 27.3.2010 on the basis of chargesheet dated 5.9.2009 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S . C 7 0, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the dismissal of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C. Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his dismissal. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his dismissal. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back- wages. Accordingly, issue No.3 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Ref. No. 22 of 2011

Instituted on 13-6-2011

Decided on 8-5-2018

Prithi Chand s/o Shri Sher Singh r/o Village Bhanar, P.O. Jural, Tehsil Jural, District Kangra, H.P. ..Petitioner.

V/S.

M/s Biogenetic Drugs Pvt. Ltd., Village Jharmajri, Baddi, District Solan, HP through its Managing Director ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khiddta, Advocate
For respondent : Shri Rajiv Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether the dismissal of the services of Shri Prithi Chand S/o Shri Sher Singh, Operator, by the Managing Director, M/s Biogenetic Drugs Private Limited, Village Jharmazri, Baddi, District Solan, H.P. w.e.f. 27.3.2010 after serving charge sheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named operator is entitled to from the concerned management?”

2. Briefly the case of the petitioner is that he was engaged by the respondent company w.e.f. 13.9.2005 and worked as such till 27.3.2010 continuously. His services had been terminated on 27.3.2010 without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). On 25.8.2009, the respondent company asked the petitioner and other workers to leave the factory and did not allow them to work in the factory and only the workmen employed through contractor had been allowed to work. On 26.8.2009, the petitioner along-with other workers came to the factory for work but the security officer stopped them to enter the factory and the gate of the factory was closed. The suspension order of the petitioner and other workers had already been pasted on the factory gate. On 26.8.2009, when the company had not allowed the petitioner and other workers to enter the factory, they made a joint complaint to the Labour Officer, Baddi upon which Labour Inspector came in the factory and made the inspection and summoned the respondent to his office for conciliation on 27.8.2009 on which date one official of the respondent handed over the letter of the company to the Labour Inspector. On 28.9.2009, on the intervention of the Labour Inspector all other workers except the suspended workers including petitioner were allowed by the respondent company to work. It is further asserted that on 5.9.2009, the petitioner received the joint chargesheet from the respondent which was replied by him and thereafter the enquiry was conducted which was not fair and on the report of enquiry officer, the petitioner was asked to file the comments to the show cause and after receiving the reply of the petitioner, his services had been terminated. The petitioner never instigated any worker to go on strike and did not cause the loss to the company in any manner. The

enquiry officer right from very beginning started favouring the respondent, who used to right down the things which favoured the company. The petitioner also gave in writing against the enquiry officer but the same was not accepted. The enquiry officer had not allowed the petitioner to lead his evidence. The enquiry officer had not conducted the enquiry in fair manner and had also not followed the principle of natural justice. The termination of the petitioner is illegal and violative of the provisions of the Industrial Disputes Act, 1947.

3. By filing reply, the respondent averred that on 21.8.2009, the petitioner along-with other workers stopped work at about 3.00 P.M. and had not allowed anyone to perform duty. On 25.8.2009, the petitioner along-with other leading workers entered the factory and went to different departments and instigated other workmen to stop their work and resort to strike and as such the petitioner along-with other leading workmen who committed grave misconducts were suspended from duty *vide* letter dated 25.8.2009. On 26.8.2009, the suspension order was given to the petitioner and seven other employees, who refused to accept the same and the same were sent through post and copies were affixed on the main gate of the factory. It is further stated that the petitioner along-with other workmen committed grave misconduct for which they were suspended from the duty and a joint chargesheet dated 5.9.2009 was issued to them and when the reply filed by the petitioner was not found satisfactory, the management decided to hold domestic enquiry in to the matter and constituted the enquiry jointly *vide* letter dated 14.9.2009. Shri Krishna Mohan Tripathi was appointed as an enquiry officer who conducted the enquiry. The enquiry officer was independent and impartial person who conducted the enquiry in fair and proper manner by following the principles of natural justice. The show cause notice was sent to the petitioner against proposed punishment of dismissal along-with the enquiry report and thereafter the petitioner was dismissed from the employment *vide* letter dated 27.3.2010. Since, all the charges leveled against the petitioner, stood proved, his services had been terminated.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent. *Vide* order dated 20.7.2013, this Court framed the following preliminary issues:

- (1) Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ..OPP.

5. Thereafter, *vide* order dated 2.12.2015, this Court decided the preliminary issue in favour of the petitioner and against the respondent by holding as under:

“In view of my foregoing findings on preliminary issue, the enquiry conducted by the enquiry officer *vide* Ex. RW-1/B, is violative of principle of natural justice, hence, is hereby set aside and quashed.

6. Since, the preliminary issue was answered against the respondent, hence, on the basis of pleadings of the parties, the following issues were framed by this Court on 2.12.2015 and the respondent was afforded opportunity to lead evidence on merits in order to prove the alleged misconduct of the petitioner :—

- (1) Whether the petitioner has committed the misconduct as alleged in the chargesheet dated 5.9.2009 issued by the respondent? ..OPR.
- (2) If issue No.1 is proved in affirmative, whether the dismissal of the petitioner is legal and justified? ..OPR.
- (3) If issue No.1 is not proved in affirmative, then to what service benefits the petitioner is entitled to? ...OPP

(4) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

Issue No.1 : No

Issue No. 2 : No

Issue No. 3 : Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief : Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. In order to prove issue No.1, the respondent has examined four RWs. Shri Bal Mohan Sharma HR/Admn. Manager appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice dated 10.8.2009 Ex. R-1, notice dated 21.8.2009 Ex. R-2, letter to Labour Officer Baddi, Ex. R-3, notice dated 25.8.2009 Ex. R-4, letter to SHO Ex. R-5, notice dated 28.8.2009 Ex. R-6, letter dated 27.8.2009 Ex. R-7, letter dated 28.8.2009 Ex. R-8, letter dated 29.8.2009 Ex. R-9, notice dated 21.2.2008 Ex. R-10, notice dated 22.2.2009 Ex. R-11, notice dated 23.2.2008 Ex. R-12, chargesheet dated 5.9.2009 Ex. R-13, settlement dated 3.3.2008 Ex. R-14 and letter dated 29.8.2016 to S.P. Baddi Ex. R-15. In cross-examination, he admitted that the petitioner was engaged as a helper and he worked continuously till the date of his termination. He further admitted that the demand notice was raised by the workers in the year, 2009 for increase in the wages. He denied that the workers had worked throughout the day on 21.8.2009. He admitted that on 24.8.2009, the respondent had ordered the increase in the wages of the workers. He denied that on 25.8.2009, all the workers were stopped by the respondent at the main gate of the factory. He further denied that the workers never went on strike in the month of August, 2009. He admitted that no show cause notice was issued to the petitioner prior to the issuance of suspension order dated 26.8.2009. He denied that the work and conduct of the petitioner remained always satisfactory. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that regular workers were stopped by the respondent and contractual workers were allowed to work in the month of August, 2009. He also denied that the petitioner had never instigated any worker to go on strike. He admitted that the labour inspector visited the factory on 28.8.2009 and all the workers except the chargesheeted workers including the petitioner were allowed to resume the duties. He denied that false charges have been leveled against the petitioner to remove him from the job illegally. He further denied that the petitioner had never indulged in any misconduct and illegal activity. He admitted that the petitioner had completed 240 days in preceding twelve months.

11. Shri Arun Thakur, HR Officer stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he also reiterated almost all the averment as made in the reply. In cross-examination, he denied that the petitioner along-with other chargesheeted workers were not addressing the workers on 21.8.2009 and have never raised any slogans in the factory premises against the management. He denied that the workers had raised a demand to increase their wages. He further denied that the workers never went on strike on 21 and 25 to 27.8.2009. He also denied that the petitioner and other chargesheeted workers have never instigated any worker to go on strike. He denied that the respondent had stopped the workers at the main gate of the factory from doing the work. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that the Labour Inspector had visited the factory in the month of August, 2009 and found the management at fault. He admitted that the petitioner and other chargesheeted workers used to raise the demands of the workers before the management. He denied that the petitioner had never indulged in any misconduct and illegal activity.

12. RW-3 Shri Dalip Singh, Packing Manager also tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he stated similar facts as stated by RW-1 and RW-2 in their cross- examination.

13. Shri Surinder Singh Bisht, Labour Inspector, Baddi appeared into the witness box as RW-4 to depose that he has not brought the summoned record as there is no such record found in their office. He further stated that notice Ex. R-1 was signed by Shri Puran Chand Thakur, the then Labour Inspector, Baddi. In cross-examination, he admitted that a file is maintained in their office regarding the conciliation proceedings of any case. He further admitted that in the notice Ex. R-1, it has not been requested to their office to initiate conciliation Proceedings.

14. On the other hand the petitioner examined Shri Harmeet Singh as PW-1, who deposed that he had worked as an operator with the respondent from the year, 2006 till the year, 2010. He further deposed that he was present in the factory on 21.8.2009 and the petitioner had never stopped him or any other worker from doing the duty and on 24.8.2009, he was also present in the factory and the petitioner had never misbehaved with any official on that day and had never used any foul language against any of the official. He also stated that the petitioner and other office bearers of the union used to espouse the cause of the workers before the management including the enhancement of bonus and the services of the petitioner were terminated as he along-with other office bearers of the union raised the demands of the workers. In cross- examination, he denied that on 10.8.2009, all the workers have gathered outside the canteen and stopped the work with the demand to raise their salary. He further denied that the petitioner along-with other workers namely Raghuvir, Vikram, Surjit Kumari, Surender Pal, Mohan Lal, Sandeep Kumar and Rakesh Kumar were leading and instructing the other workers to go on illegal strike. He also denied that on 21.8.2009 at about 3.00 P.M., the workers have stopped the work at the instance of the petitioner and aforesaid workers. He denied that on 23rd and 24th August, 2009, the workers slowed down the production. He further denied that the workers were not allowed to enter inside the factory by the petitioner and aforesaid workers from 25.8.2009 to 28.8.2009.

15. The petitioner himself appeared into the witness box as PW-2 and tendered in evidence his affidavit Ex. P-1. In cross-examination, he denied that on 21.2.2008, the workers went on the strike. He further denied that no notice of strike was given to the management. He also denied that on 21.2.2008, he along-with other workers namely Raghubir, Surender Pal, Sandeep Kumar, Surjeet Kumari, Mohan Lal, Prithi Chand and Vikram instigated the other workers to go on strike. He denied that they had told the management if their wages were not increased then they will not allow to run the factory. He admitted that prior to 21.2.2008, they have raised a demand

charter on which the Labour Inspector-cum-Conciliation Officer started the conciliation proceedings and the said proceedings were pending on 21.2.2008. He denied that after 21.2.2008 a chargesheet was issued to him and aforesaid workers and were suspended. He further denied that after the settlement Ex. R-14 they were taken back in service and the chargesheet was dropped. He also denied that on 10.8.2009 at about 1.30 P.M., he along-with the aforesaid workers instigated all the workers to stop the work. He denied that on 21.8.2009, at about 3.00 P.M. the workers have stopped the production on their instigation and thereafter the senior officials of the company had counseled them and told them that their demands would be considered. He admitted that on 26.8.2009, he along-with aforesaid workers were suspended and notice to this effect was affixed at the factory gate. He denied that when the conciliation could not materialize on 27.8.2009, then they have threatened Bal Mohan Sharma, Manager HR with dire consequences outside the office of the Labour Inspector. He further denied that the on 28.8.2009 also they had continued the illegal strike. He denied that he was dismissed from service due to the charges leveled in the chargesheet Ex. R-13.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner along-with other workers were issued joint chargesheet dated 5.9.2009 and since the explanation submitted by the petitioner was not found satisfactory by the respondent, a domestic enquiry was ordered to be conducted and accordingly Mr. K. M. Tripathi, Advocate was appointed as an enquiry officer to enquire into the charges leveled against them in respect of joint chargesheet. After the conclusion of enquiry, the enquiry officer had submitted his report dated 5.2.2010, Ex. RW-1/B. On the receipt of the enquiry report by the enquiry officer and after the satisfaction of the respondent that the charges leveled against the petitioner and other co-workers stood proved in the enquiry, the respondent concurred with the findings of the enquiry officer, as such the copy of the enquiry report along-with show cause notice was issued to the petitioner and other co-workers to the proposed punishment of dismissal and thereafter the petitioner along-with his co-workers were dismissed from the employment of the respondent company *vide* letter dated 27.3.2010. However, *vide* order dated 2.12.2015, this Court had set aside and quashed the enquiry conducted by the enquiry officer being violative of principles of natural justice and the respondent was afforded opportunity to lead evidence on merits in order to prove the misconduct as alleged in the chargesheet dated 5.9.2009 against the petitioner. At this stage, it would be pertinent to reproduce the joint chargesheet dated 5.9.2009 Ex. R-13 issued against the petitioner and other workers namely Mohan Lal, Surender Pal, Rakesh Kumar, Vikram, Nirmal Kumar, Ram Chand, Ms. Surjit Kumari, Sandeep Kumar and Prithi Chand with respect to the alleged misconduct which is in Hindi and the same reads as under:

“आप पर आरोप है कि आप लोगों ने दिनांक 21-8-2009 को बिना सूचना एक साथ मिलकर तथा एक राय होकर लगभग 3 बजे अचानक काम रोक दिया और ठेकेदार के श्रमिकों को भी काम नहीं करने दिया जिसके लिए प्रबंधकों ने नोटिस भी जारी किया कि आप लोग “काम नहीं तो वेतन नहीं” के आधार पर उस अवधि के वेतन के अधिकारी नहीं हैं।

दिनांक 24-8-2009 को प्रबंधकों ने वेतन वृद्धि घोषित की जिसका घोषित पत्र नोटिस बोर्ड पर लगाया गया।

आप सभी दिनांक 25-8-2009 को सुबह फैक्ट्री के अंदर आये परन्तु अपने कार्य स्थल पर नहीं पहुंचे। आप लोगों ने कार्य स्थल छोड़कर अन्य विभागों में जाकर श्रमिकों को काम न करने के लिए उकसाया एवं भड़काया। आप लोगों ने अपना कार्य शुरू नहीं किया। आप लोगों के उकसाने एवं भड़काने से अन्य श्रमिकों ने आप लोगों की अगुवाई में, फैक्ट्री के अंदर रहकर बिना सूचना अनुचित एवं गैरकानूनी हड़ताल की। प्रबंधकों के द्वारा आप लोगों को समझाया गया कि आप लोग श्रमिकों को अनुचित एवं गैरकानूनी हड़ताल के लिए न उकसायें और हड़ताल समाप्त कर काम पर वापस आयें क्योंकि इससे उत्पादन का भी नुकसान हो रहा है। प्रतिष्ठान की आर्थिक हालत पहले से खराब है लेकिन आप लोगों ने प्रबंधकों का कहना नहीं माना

और आप सभी ने न केवल कम्पनी के श्रमिकों को बल्कि ठेकेदार के श्रमिकों को भी काम नहीं करने दिया। दोपहर के बाद आप लोगों ने उन श्रमिकों के साथ हाथापाई की जो फैक्ट्री में बना हुआ तैयार माल डिलीवरी के लिए ले जा रहे थे और आप लोगों ने तैयार माल फैक्ट्री से बाहर नहीं जाने दिया तथा धमकी दी कि जो भी माल बाहर लेकर जायेगा उसके हाथ पैर तोड़ देंगे। शाम को अपनी पाली समाप्त होने के बाद आप सभी फैक्ट्री गेट के पास अंदर ही इक्ट्ठे हो गए और कहा कि आप लोग फैक्ट्री नहीं चलने देंगे। आप लोगों के उग्र एवं विध्वंसक स्वैये को देखते हुए पुलिस बुलानी पड़ी। पुलिस के आने के बाद आप लोग फैक्ट्री से बाहर गये।

आप लोगों के द्वारा एक साथ मिलकर एवं एक राय होकर दिनांक 25-8-2009 को किये गए दुराचरणों के लिए प्रबंधकों ने आपको, अपने पत्र दिनांक 25-8-2009 द्वारा कार्य से निलंबित कर दिया। आप लोगों को निलंबन आदेश दिनांक 26-8-2009 को सुबह लगभग 8.30 बजे फैक्ट्री गेट पर दिया गया। लेकिन आप लोगों ने निलंबन आदेश पढ़ कर लेने से मना कर दिया तदोपरान्त निलंबन आदेशों को गेट पर लगा दिया गया। दिनांक 26-8-2009 को आप सभी निलंबित श्रमिकों ने गेट पर दूसरे श्रमिकों को भी रोक लिया तथा धमकाया कि जो काम पर जाएगा उसके हाथ पैर तोड़ दिए जाएंगे, जिसके कारण कुछ श्रमिक जो कार्य पर जाना चाहते थे वे भी आप लोगों की धमकियों की वजह से कार्य पर नहीं गए।

प्रबंधकों द्वारा समस्त हड़ताली श्रमिक को बार-बार समझाया गया परन्तु इसके बाबजूद भी हड़ताली श्रमिक आप सभी के उकसाने व भड़काने पर हड़ताल समाप्त कर ड्यूटी पर उपस्थित नहीं हुए और वे इस बात पर अड़े रहे हैं कि जब तक निलंबित श्रमिकों का निलंबन वापस नहीं लिए जाता कोई भी ड्यूटी पर नहीं जाएगा और हड़ताल जारी रहेगी। आप लोगों तथा एक अन्य निलंबित श्रमिक श्री रघुवीर के साथ कुछ और श्रमिक भी दुराचरणों में लिप्त हुए। आप लोगों ने उपरोक्त दिनांक में यह भी धमकी दी कि आप लोग कम्पनी नहीं चलने देंगे, जो भी काम पर जाएगा उन्हें मारेंगे-पीटेंगे और देखते हैं कि कैसे फैक्ट्री से बाहर निकलते हैं।

दिनांक 27-8-2009 को संराधन कार्यवाही के दौरान आप सभी निलंबित श्रमिकों ने संराधन कार्यवाही समाप्त होने के समय, कम्पनी के अधिकारी को जो संराधन कार्यवाही में हिस्सा लेने गए थे, धमकी दी कि उन्हें लेबर ऑफिस से बाहर नहीं जाने देंगे एवं उनकी गाड़ी भी तोड़ दी जायेगी। जिसकी सूचना पुलिस विभाग को भी दी गयी थी।

आप लोगों के उकसाने व भड़काने से दिनांक 25-8-2009 को दोनों पालियों के श्रमिक हड़ताल पर रहे और दिनांक 26-8-2009 से फैक्ट्री के बाहर रहकर अपनी अनुचित एवं गैरकानूनी हड़ताल दिनांक 28-8-2009 तक जारी रखी। आप सभी के उपरोक्त कार्य गंभीर दंडनीय दुराचरण हैं। आप को आदेश है कि आप इस आरोप पत्र की प्राप्ति के तीन दिन के अंदर उत्तर दें कि क्यों न आप के विरुद्ध अनुशासनात्मक कार्यवाही की जाए। अगर आप का उत्तर निर्धारित समय में प्राप्त नहीं हुआ तो यह समझा जाएगा कि आपको आरोप स्वीकार है तथा तदनुसार कार्यवाही की जायेगी।

मामले के अंतिम निपटारे तक आपका निलंबन आदेश प्रभावी रहेगा।”

17. Now, the question which arises for consideration before this Court is as to whether the respondent has been able to prove the misconduct allegedly committed by the petitioner as per the aforesaid chargesheet. The first charge against the petitioner is that on 21.8.2009, at about 3.00 P.M., the petitioner along-with the other co-workers named in the chargesheet stopped the workers of the factory including the workers of the contractor from doing the work for which the management had also issued the notice to the workers that they would not be entitled for the wages for the period during which they had not worked on the principle of “no work no wage”. However, to prove the aforesaid charge, except for the statements of RW-1, RW-2 and RW-3, no other cogent and satisfactory evidence on record has been led by the respondent. Though, RW-1 has tendered in evidence notice dated 21.8.2009, Ex. R-2 but no reliance can be placed upon the same because a copy of the same has also been allegedly endorsed to the Labour Department but neither any record

nor any witness from the Labour Department has been produced by the respondent in order to prove that this notice was also sent to the Labour Department. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. The petitioner has specifically denied in cross-examination that on 21.8.2009 at 3.00 P.M. the workers have stopped the work on their instigation. Neither any independent witness nor any worker of the factory or any worker of the contractor has been examined by the management to prove the aforesaid charge against the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charge has not been proved by the respondent against the petitioner.

18. The second charge against the petitioner and other co-workers named in the chargesheet is that on 25.8.2009, the petitioner along-with his associates named in the chargesheet instigated all the workers of the factory including the workers of the contractor to go on strike as a result of which all the workers went on illegal strike and also manhandled some of the workers and threatened them with dire consequences as a result of which the Police had to be called. To prove the aforesaid charge, the respondent had examined RW-1 to RW-3 but except for their bald statements, no other evidence has been led by the respondent to prove the aforesaid charge against the petitioner. Neither any independent witness nor any factory worker has been examined by the respondent in order to prove the aforesaid charge against the petitioner. Moreover, no worker of the contractor has been produced in the witness box. Though, the charge against the petitioner is that due to the illegal strike, the police had to be called, however, no record from the Police Station has been produced before this Court. RW-1 has admitted in cross-examination that they had not made any complaint to the Police that the workers had stopped the ingress of the vehicles on 25.8.2009 into the factory. RW-1 also stated in cross-examination that a complaint was made to the Police, however, for the reasons best known to the respondent neither any witness from the Police station has been examined nor any record from the Police station has been produced. RW-1 has also tendered in evidence complaint dated 25.8.2009 Ex. R-5 allegedly written to the SHO Police Station Barotiwala for police protection, however, there is nothing on record as to what had happened thereafter and what action had been taken by the Police on the aforesaid complaint Ex. R-5. There is no evidence on record as to whether the Police had arrived at the factory and whether Police protection had been given on the complaint Ex. R-5. Similarly, RW-1 has tendered in evidence copy of complaint dated 25.8.2009 Ex. R-3 addressed to Labour Officer, Baddi regarding the illegal strike but no record from the office of Labour Officer Baddi has been produced before this Court. Therefore, in the absence of any record from the SHO Police Station Barotiwala and Labour Officer Baddi, no reliance can be placed upon the complaints Ex. R-3 & Ex. R-5. Hence, in the absence of any cogent and satisfactory evidence on record the aforesaid charge against the petitioner has also not been proved.

19. The next charge against the petitioner is that on 25.8.2009, the petitioner and other workers named in the chargesheet were suspended and on 26.8.2009 at 8.30 A.M. they refused to receive the suspension order and thereafter the copy of the same was pasted on the factory gate and on 26.8.2009 all the suspended workers have stopped the workers from doing the work. Further charge against the petitioner is that on 27.8.2009, after the conclusion of the conciliation proceedings the petitioner and other suspended workers had threatened the officials of the company who had attended the conciliation proceedings for which a complaint was also made to the Police. They have also been charged that due to their instigation, the workers of both the shifts remained on illegal strike on 25.8.2009 and they continued their strike *w.e.f.* 26.8.2009 to 28.8.2009. To prove the aforesaid charges, the respondent has examined RW-1 to RW-3, however, no cogent and satisfactory evidence has been led by the respondent to prove the aforesaid charges leveled against the petitioner and other workers named in the chargesheet. RW-1 stated in cross-examination that the respondent had made the complaint Ex. R-8 to the Labour Officer, Baddi regarding the illegal strike and also to the Labour Commissioner *vide* letter Ex. R-6, however, the respondent has failed

to prove that the letter Ex. R-6 was sent to the Labour Commissioner. RW-1 admitted in cross-examination that the letter Ex. R-6 might have been sent through registered post but the postal receipt *qua* the same was not annexed. Though, RW-1 has stated that the letter Ex. R-8 was sent to the Labour Officer by hand but admittedly there is no endorsement/receipt of Labour Officer on the letter Ex. R-8. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the letters Ex. R-6 and Ex. R-8 regarding the illegal strike were received by the Labour Officer and Labour Commissioner respectively. Similarly, no witness from the Police Station Barotiwala has been examined and no record of Police Station Barotiwala has been produced before this Court in order to prove the letter Ex. R-7 written to the SHO Police Station Barotiwala regarding the illegal strike of the workers. There is also nothing on record to show that what action has been taken by the Police Station Barotiwala upon the letter Ex. R-7. RW-1 also admitted in cross-examination that they have not made any complaint to the Police regarding the threat given by the workers after the conciliation proceedings on 27.8.2009. Furthermore, RW-1 to RW-3 admitted in their cross-examination that the management had not received any complaint from the contractor regarding the stopping of work by the petitioner and other suspended workers. RW-2 also admitted that the other workers have not made any complaint in writing that they had been stopped by the petitioner for doing the work and to go on strike. Similarly, there is no evidence on record to suggest that during the period of alleged strike there was no production in the factory. RW-1 admitted that the respondent had not annexed any record of “no production” in the factory on 21.8.2009 and from 25.8.2009 to 27.8.2009. Though, RW-1 to RW-3 stated in cross-examination that they had deducted the wages of the workers for the period of strike but admittedly no record has been produced by the respondent regarding the deduction of wages during the period of strike and no record has been produced regarding the fact that the goods have not been delivered to the dealers during the period of strike. Neither any independent witness nor any worker has been examined to prove the aforesaid charge against the petitioner and other workers named in the chargesheet. Even, the contractor was not produced in the witness box in order to prove that his workers were stopped from doing the work by the petitioner and other workers named in the chargesheet. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charges against the petitioner and other workers named in the chargesheet have not been proved. Hence, I have no hesitation in holding that the respondent has failed to prove that due to the instigation of the petitioner and other workers named in the chargesheet, the workers went on illegal strike from 25.8.2009 to 28.9.2009 and had threatened the officials of the company

20. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the respondent has failed to prove the misconduct against the petitioner as alleged in the chargesheet dated 5.9.2009 Ex. R-13 issued by the respondent. Hence, the dismissal of the services of the petitioner on the basis of the aforesaid chargesheet is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

21. Since, I have held under issues No.1 & 2 above that the dismissal of the services of the petitioner by the respondent *w.e.f.* 27.3.2010 on the basis of chargesheet dated 5.9.2009 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an

employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabh akant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the dismissal of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C. Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his dismissal. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his dismissal. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back- wages. Accordingly, issue No.3 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 17 of 2017

Instituted on 9-1-2017

Decided on 2-5-2018

Prem Chand Bhardwaj s/o late Shri Vidya Dhar Bhardwaj, r/o Village Kalna, P.O. Singla,
Tehsil Rampur Bushehr, District Shimla, H.P. ..Petitioner.

VS.

1. The Conservator of Forests, Circle Rampur District Shimla, H.P.
2. The Divisional Forest Officer CAT Plan, Division Nichar at Rampur, Tehsil Rampur, District Shimla, H.P. ..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Rajinder Sharma, Advocate

For respondents : Shri Mahinder Singh, ADA

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether time to time termination of services of Shri Prem Chand Bhardwaj s/o Late Shri Vidya Dhar Bhardwaj, Village Kalna, P.O. Singla, Tehsil Rampur, Distt. Shimla, H.P. from the year 1990 to 2002 and 01.7.2012 to 21.6.2013 by (i) The Conservator of Forests, Circle Rampur Bushehar, Distt. Shimla, H.P. (ii) The Divisional Forest Officer, CAT Plan Division, Nichar at Rampur Bushehr, Distt. Shimla, H.P. and consequently not giving service benefits, as has been demanded vide demand notice dated 04.05.2015 (copy enclosed), is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1.1.1987, he was engaged as driver on daily waged basis in the Forest Circle Rampur and continued to work as such till 30.5.1990 on which date his services were orally terminated by the respondents and thereafter he was not re-engaged despite his various personal visits and requests whereas number of other junior persons were retained in service. It is further stated that on 20.3.2002, the respondent department engaged the services of the petitioner on daily waged basis as Driver in CAT Plan, Forest Division Nichar Rampur at Rampur and he had worked for seven months and thereafter the respondent department had signed the contract on 1.11.2002 with the petitioner and he worked as driver in CAT plan without any break till 30.6.2012 on which date his services were again ordered to be terminated without assigning any reason and thereafter the petitioner kept on regularly visiting the offices of the respondents and ultimately on 20.6.2013, he was again allowed to perform his duties as driver in CAT Plan Forest Division Nichar and since then the petitioner has been regularly discharging his duties with sincerity and to the entire satisfaction of his superiors. It is also stated that juniors to the petitioner namely S/Shri Lachmi nand, Ramesh Chand, Nand Lal, Bhim Singh, Harbans Singh, Bhola Ram and Ranbir Singh are retained as drivers and their services have been regularized as drivers with all consequential benefits but the petitioner was singled out for discriminatory treatment. That the termination of the services of the petitioner time and again is in gross violation of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). That the petitioner is serving with the respondent department from the last 27 years except certain artificial and fictional breaks effected by the authorities of the respondent department intentionally in his service. That since the petitioner was engaged as driver on daily waged basis *w.e.f.* 1.1.1987, hence, he is entitled for regularization of his services after completion of 10 years of service. Against this back-drop it has been prayed that the respondents be directed to treat the petitioner in continuous service as driver on daily waged basis *w.e.f.* 1.1.1987 to till date and the breaks effected in the service of the petitioner from time to time be condoned and further the respondents be directed to grant all service benefits to the petitioner. It is further prayed that the respondents be directed to regularize the services of the petitioner on completion of his 10 years of service.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken that the petitioner was initially engaged as driver on daily wage basis in the forest circle Rampur *w.e.f.* 1.1.1987 to 30.5.1990 and worked for 880 days in various spells and the petitioner had left the work at his own, that the petitioner was engaged in the CAT Plan Division Nichhar *w.e.f.* 22.4.2002 to 31.10.2002 and worked for 177 days in various spells and thereafter the petitioner was engaged as driver on contract *w.e.f.* 1.11.2002 to 30.6.2012 in Upper Satluj Valley Watershed Development Society Rampur which society was closed *vide* letter dated 5.5.2012 and the services of the staff engaged in this Society including the petitioner were terminated *w.e.f.* 30.6.2012 and that the petitioner had been re- engaged under HP State Compensatory Afforestation Fund Management & Planning Authority on contract basis *w.e.f.* 22.5.2013 and is presently working in the same capacity. On merits, it has been denied that the respondents had given artificial and fictional breaks intentionally in the service of the petitioner. That the petitioner had not completed requisite 10 years of continuous service as on 1.1.1997, hence, he is not entitled for regularization. It is denied that the juniors to the petitioner are still working with the respondents. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder the petitioner has reiterated the allegations made in the claim petition by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 10.10.2017.

- (1) Whether time to time termination of the services of the petitioner by the respondents from the year, 1990 to 2002 and 1.7.2012 to 21.6.2013 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? *..OPP.*
- (2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? *..OPP.*
- (3) Whether the petition is not maintainable as alleged? *..OPR.*
- (4) Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : No

Relief : Reference answered in favour of the respondents and against the petitioner per operative part of award.

REASONS FOR FINDINGS

Issues No. 1:

8. To prove issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the

claim petition. In cross-examination, he admitted that at present he is working as a driver with the respondent department at Rampur Bushehr. He further admitted that he had worked as a daily wager from the year, 1987 to 1990. He denied that he had worked for 240 days only in the year, 1990. He admitted that the department had not engaged any worker after the year, 2012. He denied that Lachmi Nand, Ramesh Chand, Nand Lal, Bhim Singh, Harbans Singh, Bhola Ram etc., were engaged prior to him in the department and they have been working continuously with the department as such they have been regularized. He further denied that he had abandoned the job at his own after the year, 1990. He admitted that no appointment letter had been issued by the department. He denied that he had not completed 10 years of continuous service.

9. PW-2 Shri Kam Raj, Junior Assistant in the office of DFO CAT Plan Rampur has tendered in evidence the mandays chart of petitioner Ex. PW-2/A. He also tendered in evidence the copies of bills pertaining to petitioner Ex. PW-2/B-1 to Ex. PW-2/B-7 and deposed that the information under RTI Act Ex. PW-2/C has been issued by their office which is correct. In cross-examination, he admitted that the above mentioned record has neither been prepared by him nor the same has been prepared at his instance.

10. On the other hand, the respondents have examined Shri Chander Bhushan, DFO CAT Plan Division Nichar as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence the copy of notification dated 23.10.2002 Ex. RW-1/B, copy of notification dated 5.5.2012 Ex. RW-1/C, office order dated 21.5.2013 Ex. RW-1/D, copy of contract agreement dated 1.11.2009 Ex. RW-1/E and copy of agreement dated 28.5.2016 Ex. RW-1/F. In cross-examination he admitted that the petitioner had been engaged as daily wage driver *w.e.f.* 1.1.1987 till 30.5.1990 and thereafter he was re-engaged as daily wage driver in the year, 2002. He further admitted that the petitioner is still working with the department on contract basis. He denied that the petitioner was given fictional breaks after the year, 1990. He admitted that no notice was issued to the petitioner for resumption of his duties. He further admitted that their department had engaged new drivers after the year, 1990. He expressed his ignorance that S/Shri Lachmmi Nand, Ramesh Chand, Nand Lal, Bhim Singh, Harbans Singh, Bhola Ram and Ranbir Singh were engaged after the year, 1990. He denied that the contract was executed with the petitioner in order to frustrate his seniority.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was initially engaged as a driver on daily wages basis in the Forest Circle, Rampur *w.e.f.* 1.1.1987 and he continued to work as such till 30.5.1990. Thereafter, he was engaged in the Catchment Area Treatment Plan (CAT) Plan Division Nichar *w.e.f.* 22.4.2002 to 31.10.2002. It is also clear from the record that with the constitution of Upper Satluj Valley Watershed Development Society Rampur, *vide* Government Notification Ex. RW-1/B, the petitioner was engaged on contract basis with the said society *w.e.f.* 1.11.2002. The respondents had also placed on record one of the contracts executed between the petitioner and the aforesaid society dated 1.11.2009 Ex. RW-1/E. The aforesaid society was ordered to be closed *w.e.f.* 30.6.2012 *vide* notification Ex. RW-1/C, and the services of the staff engaged in the said society including the petitioner were terminated *w.e.f.* 30.6.2012. The perusal of the contract dated 1.11.2009 Ex. RW-1/E shows that the contract was for a limited period and for a specific purpose as per clause-VIII and it has been specifically stated therein that the contract will in no way give the petitioner any right or claim for regular employment. Thereafter, the petitioner had been re-engaged under HP State Compensatory Afforestation Fund Management & Planning Authority (CAMPA) on contract basis *w.e.f.* 22.5.2013 *vide* office order Ex. RW-1/D and he is working as a driver on contract basis till date. The petitioner had also signed one of the contracts dated 28.5.2016 Ex. RW-1/F. Hence, from the perusal of the record, it stands duly proved that initially the petitioner was engaged as a driver on daily wages basis *w.e.f.* 21.11.1987 till 30.5.1990 as per mandays chart Ex. PW-2/A. The case of the respondents is that after 30.5.1990, the petitioner had left the work at this

own and never approached the respondents for re-engagement whereas the case of the petitioner is that his services were terminated orally and he was not re-engaged despite his various personal visits and requests. However, except for his bald statement, there is no other evidence on record to suggest that after 30.5.1990, the petitioner kept on visiting and requesting the respondents to re-engage him. There is no material on record to suggest as to what steps were immediately taken by the petitioner after his alleged termination. The perusal of the reference shows that the petitioner had raised the demand notice on 4.5.2015 *i.e.* after more than 25 years from the date of his alleged termination *w.e.f.* 30.5.1990. The petitioner has failed to explain as to why he remained silent for a period of about 25 years in raising the demand notice. There is no evidence on record to suggest that the petitioner had ever visited the office of the respondents for his re-engagement. Neither any letter nor any representation has been placed on record by the petitioner to prove that he had been requesting the respondents for his re-engagement. Rather, from the evidence by way of affidavit Ex. PW-1/A filed by the petitioner himself, it has become clear that on 20.3.2002, his services have been re-engaged as driver in CAT Plan and he had worked only for seven months. It is also clear that thereafter he was engaged on contract basis by Upper Satluj Valley Watershed Development Society, Rampur and he worked there without any break till 30.6.2012. The petitioner has failed to explain as to why he has not raised the demand notice immediately after his alleged termination on 30.5.1990 and why he accepted the contractual appointment *w.e.f.* 1.11.2002 with Upper Satluj Valley Watershed Development Society, Rampur and why he had further accepted his re-engagement under HP State Compensatory Afforestation Fund Management and Planning Authority (CAMPA) on contract basis *w.e.f.* 21.5.2013 till date without immediately raising any industrial dispute after his alleged termination *w.e.f.* 30.5.1990. Therefore, such conduct on the part of the petitioner gave rise to the inference that he intended to abandon the job voluntarily after 30.5.1990 and his case would not fall within the definition of retrenchment as such there is no question of violation of any provisions of the Act. In ***Nagar Parishad Bilaspur Vs. Bone Ram reported in 2005 (1) Shim. LC 79***, our own Hon'ble High Court has held that where the conduct of the workman is such that he had abandoned his job, his services would stand automatically terminated in law. The relevant extract of the aforesaid judgment reads as under:

“10..... In this background, the only inference which can be drawn from the conduct of the workman is that he abandoned his job and his services stood automatically terminated in law. Such an automatic termination of services, caused by workman himself and not by the Employer, would not fall within the definition of retrenchment”.

12. Furthermore, It has been held by the **Hon'ble Apex Court in (2013) 10 Supreme Court Cases 253 titled as Vijay S. Sathaye Vs. Indian Airlines Limited and Ors.** that absence from duty in the beginning may be a mis-conduct but when absence is for a long period, it may amount to voluntary abandonment of service. The relevant paras 12 to 14 are reproduced as under:—

“12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

“ 13. In *Jeewanlal (1929) Ltd., Calcutta v. Its Workmen*, this Court held as under (AIR p. 1570 para 6):

“.....there would be the class of cases where long unauthorized absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.”

(See also: *Shahoodul Haque v. The Registrar, Co-operative Societies*,

“14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as “retrenchment” from service. (See: *State of Haryana v. Om Prakash*)”.

Therefore, in view of the above cited rulings and having regard to the overwhelming evidence on record, it cannot be said that the services of the petitioner were terminated by the respondents *w.e.f.* 30.5.1990 rather he himself had abandoned the job.

13. Moreover, since the petitioner had been engaged on contract basis *w.e.f.* 1.11.2002 till 30.6.2012 under the Upper Satluj Valley Watershed Development society, Rampur and thereafter he had been re-engaged under the HP State Compensatory Afforestation Fund Management & Planning Authority (CAMPA) on contract basis *w.e.f.* 21.5.2013, the termination of the services of the petitioner does not fall under the definition of retrenchment in view of the exception contained in clause (bb) of section 2(oo) of the Act. In **2006 LLR 1233 SC in case titled as Vidya Vardhaka Sangha & Anr. V. Y.D Deshpande & Ors.**, it has been held that :—

“The appointment made on probation/ad-hoc basis for a specific period of time comes to an end by efflux of time and the person on such post can have no right to continue on the post. When after having accepted the terms and conditions stipulated in the appointment letter and allowed, the period for which they were appointed has been elapsed by efflux of time, they cannot be permitted to challenge the validity of their termination.

It was also held in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. that workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, had no right to the post.

In **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.** the Hon’ble Supreme Court has held as under:

“11. The question as to whether Chapter V-A of the Act will apply or not would be dependent on the issue as to whether an order of retrenchment comes within the purview of Section 2 (oo) (bb) of the Act or not. If the termination of service in view of the exception contained in clauses (bb) of Section 2(oo) of the Act is not a ‘retrenchment’, the question of applicability of Chapter V-A thereof would not arise.

12. Central Bank of India Vs. S. Stayam whereupon reliance was placed by Mr. Singh, is itself an authority for the proposition that the definition of ‘retrenchment’ as contained in the said provision is wide. Once it is held that having regard to the nature of termination of services it would not come within the purview of the said definition, the question of applicability of Section 25-G of the Act does not arise.”

14. Thus, on the basis of the above cited rulings and also having regard to the entire evidence on record, it can safely be concluded that *w.e.f.* 1.11.2002, the petitioner had been engaged on contract basis, who was not retrenched *w.e.f.* 30.6.2012, within the meaning of section 2(oo) of the Industrial Disputes Act, 1947 and that his case falls within the exception as prescribed under section 2(oo)(bb) of the Act, hence, no protection of sections 25-F, 25-G and 25-H is available to the petitioner. Moreover, the perusal of the record shows that the petitioner is still working on contract basis with HP State Compensatory Afforestation Fund Management & Planning Authority (CAMPA) *w.e.f.* 21.5.2013 till date.

15. Therefore, in view of my aforesaid observations, since the petitioner had initially abandoned the job after 30.5.1990 and thereafter he was engaged on contract basis from time to time by accepting the terms and conditions stipulated in the contract, it cannot be said that time to time termination of the services of the petitioner by the respondents from the year, 1990 to 2002 and from 1.7.2012 to 21.6.2013 without complying with the provisions of the Act is illegal and unjustified. Consequently, the petitioner fails to prove this issue which is answered in favour of the respondents and against the petitioner.

Issue No. 2:

16. Since, the petitioner has failed to prove issue No.1, this issue becomes redundant.

Issue No. 3:

17. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issue No.1 to 3, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered against the petitioner and in favour of respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 2nd Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 13 of 2011

Instituted on 2-5-2011

Decided on 8-5-2018

Vikram s/o Shri Rattan Chand, r/o Village Chattipura, P.O. Barotiwala, Tehsil Baddi,
District Solan, H.P. *..Petitioner.*

Vs.

M/s Biogenetic Drugs Pvt. Ltd., Village Jharmajri, Baddi, District Solan, HP through its
Managing Director *..Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khiddta, Advocate
For respondent : Shri Rajiv Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether the dismissal of the services of Shri Vikram s/o Shri Rattan Chand, Operator, by the Managing Director, M/s Biogenetic Drugs Private Limited, Village Jharmazri, Baddi, District Solan, H.P. *w.e.f.* 27.3.2010 after serving charge sheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named operator is entitled to from the concerned management?”

2. Briefly the case of the petitioner is that he was engaged by the respondent company *w.e.f.* 13.6.2005 and worked as such till 27.3.2010 continuously. His services had been terminated on 27.3.2010 without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). On 25.8.2009, the respondent company asked the petitioner and other workers to leave the factory and did not allow them to work in the factory and only the workmen employed through contractor had been allowed to work. On 26.8.2009, the petitioner along-with other workers came to the factory for work but the security officer stopped them to enter the factory and the gate of the factory was closed. The suspension order of the petitioner and other workers had already been pasted on the factory gate. On 26.8.2009, when the company had not allowed the petitioner and other workers to enter the factory, they made a joint complaint to the Labour Officer, Baddi upon which Labour Inspector came in the factory and made the inspection and summoned the respondent to his office for conciliation on 27.8.2009 on which date one official of the respondent handed over the letter of the company to the Labour Inspector. On 28.9.2009, on the intervention of the Labour Inspector all other workers except the suspended workers including petitioner were allowed by the respondent company to work. It is further asserted that on 5.9.2009, the petitioner received the joint chargesheet from the respondent which was replied by him and thereafter the enquiry was conducted which was not fair and on the report of enquiry officer, the petitioner was asked to file the comments to the show cause and after receiving the reply of the petitioner, his services had been terminated. The petitioner never instigated any worker to go on strike and did not cause the loss to the company in any manner. The enquiry officer right from very beginning started favouring the respondent, who used to right down the things which favoured the company. The petitioner also gave in writing against the enquiry officer but the same was not accepted. The enquiry officer had not allowed the petitioner to lead his evidence. The enquiry officer had not conducted the enquiry in fair manner and had also not followed the principle of natural justice. The termination of the petitioner is illegal and violative of the provisions of the Industrial Disputes Act, 1947.

3. By filing reply, the respondent averred that on 21.8.2009, the petitioner along-with other workers stopped work at about 3.00 P.M. and had not allowed anyone to perform duty. On 25.8.2009, the petitioner along-with other leading workers entered the factory and went to different departments and instigated other workmen to stop their work and resort to strike and as such the petitioner along-with other leading workmen who committed grave misconducts were suspended from duty *vide* letter dated 25.8.2009. On 26.8.2009, the suspension order was given to the petitioner and seven other employees, who refused to accept the same and the same were sent through post and copies were affixed on the main gate of the factory. It is further stated that the petitioner along-with other workmen committed grave misconduct for which they were suspended from the duty and a joint chargesheet dated 5.9.2009 was issued to them and when the reply filed

by the petitioner was not found satisfactory, the management decided to hold domestic enquiry in to the matter and constituted the enquiry jointly *vide* letter dated 14.9.2009. Shri Krishna Mohan Tripathi was appointed as an enquiry officer who conducted the enquiry. The enquiry officer was independent and impartial person who conducted the enquiry in fair and proper manner by following the principles of natural justice. The show cause notice was sent to the petitioner against proposed punishment of dismissal along-with the enquiry report and thereafter the petitioner was dismissed from the employment *vide* letter dated 27.3.2010. Since, all the charges leveled against the petitioner, stood proved, his services had been terminated.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent. *Vide* order dated 20.7.2013, this Court framed the following preliminary issues:

- (1) Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ..*OPP*.

5. Thereafter, *vide* order dated 2.12.2015, this Court decided the preliminary issue in favour of the petitioner and against the respondent by holding as under:

“In view of my foregoing findings on preliminary issue, the enquiry conducted by the enquiry officer *vide* Ex. RW-1/B, is violative of principle of natural justice, hence, is hereby set aside and quashed.

6. Since, the preliminary issue was answered against the respondent, hence, on the basis of pleadings of the parties, the following issues were framed by this Court on 2.12.2015 and the respondent was afforded opportunity to lead evidence on merits in order to prove the alleged misconduct of the petitioner.

- (1) Whether the petitioner has committed the misconduct as alleged in the chargesheet dated 5.9.2009 issued by the respondent? ..*OPR*.
- (2) If issue No.1 is proved in affirmative, whether the dismissal of the petitioner is legal and justified? ..*OPR*.
- (3) If issue No.1 is not proved in affirmative, then to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

Issue No.1: No

Issue No. 2 : No

Issue No. 3 : Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief : Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. In order to prove issue No.1, the respondent has examined four RWs. Shri Bal Mohan Sharma HR/Admn. Manager appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice dated 10.8.2009 Ex. R-1, notice dated 21.8.2009 Ex. R-2, letter to Labour Officer Baddi, Ex. R-3, notice dated 25.8.2009 Ex. R-4, letter to SHO Ex. R-5, notice dated 28.8.2009 Ex. R-6, letter dated 27.8.2009 Ex. R-7, letter dated 28.8.2009 Ex. R-8, letter dated 29.8.2009 Ex. R-9, notice dated 21.2.2008 Ex. R-10, notice dated 22.2.2009 Ex. R-11, notice dated 23.2.2008 Ex. R-12, chargesheet dated 5.9.2009 Ex. R-13, settlement dated 3.3.2008 Ex. R-14 and letter dated 29.8.2016 to S.P. Baddi Ex. R-15. In cross-examination, he admitted that the petitioner was engaged as a helper and he worked continuously till the date of his termination. He further admitted that the demand notice was raised by the workers in the year, 2009 for increase in the wages. He denied that the workers had worked throughout the day on 21.8.2009. He admitted that on 24.8.2009, the respondent had ordered the increase in the wages of the workers. He denied that on 25.8.2009, all the workers were stopped by the respondent at the main gate of the factory. He further denied that the workers never went on strike in the month of August, 2009. He admitted that no show cause notice was issued to the petitioner prior to the issuance of suspension order dated 26.8.2009. He denied that the work and conduct of the petitioner remained always satisfactory. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that regular workers were stopped by the respondent and contractual workers were allowed to work in the month of August, 2009. He also denied that the petitioner had never instigated any worker to go on strike. He admitted that the labour inspector visited the factory on 28.8.2009 and all the workers except the chargesheeted workers including the petitioner were allowed to resume the duties. He denied that false charges have been leveled against the petitioner to remove him from the job illegally. He further denied that the petitioner had never indulged in any misconduct and illegal activity. He admitted that the petitioner had completed 240 days in preceding twelve months.

11. Shri Arun Thakur, HR Officer stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he also reiterated almost all the averment as made in the reply. In cross-examination, he denied that the petitioner along-with other chargesheeted workers were not addressing the workers on 21.8.2009 and have never raised any slogans in the factory premises against the management. He denied that the workers had raised a demand to increase their wages. He further denied that the workers never went on strike on 21 and 25 to 27.8.2009. He also denied that the petitioner and other chargesheeted workers have never instigated any worker to go on strike. He denied that the respondent had stopped the workers at the main gate of the factory from doing the work. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that the Labour Inspector had visited the factory in the month of August, 2009 and found the management at fault. He admitted that the petitioner and other chargesheeted workers used to raise the demands of the workers before the management. He denied that the petitioner had never indulged in any misconduct and illegal activity.

12. RW-3 Shri Dalip Singh, Packing Manager also tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he stated similar facts as stated by RW-1 and RW-2 in their cross-examination.

13. Shri Surinder Singh Bisht, Labour Inspector, Baddi appeared into the witness box as RW-4 to depose that he has not brought the summoned record as there is no such record found in their office. He further stated that notice Ex. R-1 was signed by Shri Puran Chand Thakur, the then Labour Inspector, Baddi. In cross-examination, he admitted that a file is maintained in their office regarding the conciliation proceedings of any case. He further admitted that in the notice Ex. R-1, it has not been requested to their office to initiate conciliation Proceedings.

14. On the other hand the petitioner examined Shri Harmeet Singh as PW-1, who deposed that he had worked as an operator with the respondent from the year, 2006 till the year, 2010. He further deposed that he was present in the factory on 21.8.2009 and the petitioner had never stopped him or any other worker from doing the duty and on 24.8.2009, he was also present in the factory and the petitioner had never misbehaved with any official on that day and had never used any foul language against any of the official. He also stated that the petitioner and other office bearers of the union used to espouse the cause of the workers before the management including the enhancement of bonus and the services of the petitioner were terminated as he along-with other office bearers of the union raised the demands of the workers. In cross-examination, he denied that on 10.8.2009, all the workers have gathered outside the canteen and stopped the work with the demand to raise their salary. He further denied that the petitioner along-with other workers namely Raghuvir, Mohan Lal, Surjit Kumari, Surender Pal, Sandeep Kumar, Prithi Chand and Rakesh Kumar were leading and instructing the other workers to go on illegal strike. He also denied that on 21.8.2009 at about 3.00 P.M., the workers have stopped the work at the instance of the petitioner and aforesaid workers. He denied that on 23rd and 24th August, 2009, the workers slowed down the production. He further denied that the workers were not allowed to enter inside the factory by the petitioner and aforesaid workers from 25.8.2009 to 28.8.2009.

15. The petitioner himself appeared into the witness box as PW-2 and tendered in evidence his affidavit Ex. P-1. In cross-examination, he denied that on 21.2.2008, the workers went on the strike. He further denied that no notice of strike was given to the management. He also denied that on 21.2.2008, he along-with other workers namely Raghubir, Surender Pal, Sandeep Kumar, Surjeet Kumari, Mohan Lal and Prithi Chand instigated the other workers to go on strike. He denied that they had told the management if their wages were not increased then they will not allow to run the factory. He admitted that prior to 21.2.2008, they have raised a demand charter on which the Labour Inspector-cum-Conciliation Officer started the conciliation proceedings and the said proceedings were pending on 21.2.2008. He denied that after 21.2.2008 a chargesheet was issued to him and aforesaid workers and were suspended. He further denied that after the settlement Ex. R-14 they were taken back in service and the chargesheet was dropped. He also denied that on 10.8.2009 at about 1.30 P.M., he along-with the aforesaid workers instigated all the workers to stop the work. He denied that on 21.8.2009, at about 3.00 P.M. the workers have stopped the production on their instigation and thereafter the senior officials of the company had counseled them and told them that their demands would be considered. He admitted that on 26.8.2009, he along-with aforesaid workers were suspended and notice to this effect was affixed at the factory gate. He denied that when the conciliation could not materialize on 27.8.2009, then they have threatened Bal Mohan Sharma, Manager, HR with dire consequences out-side the office of Labour Inspector. He further denied that on 28.8.2009, they had continued the illegal strike. He admitted that chargesheet Ex. R-13 was issued to him. He denied that he was dismissed from service due to the charges leveled in the chargesheet Ex. R-13.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner along-with other workers were issued joint chargesheet dated 5.9.2009 and since the explanation submitted by the petitioner was not found satisfactory by the respondent, a domestic enquiry was ordered to be conducted and accordingly Mr. K. M. Tripathi, Advocate was appointed as an enquiry officer to enquire into the charges leveled against them in respect of joint chargesheet. After the conclusion of enquiry, the enquiry officer had submitted his report dated 5.2.2010, Ex. RW-1/B. On the receipt of the enquiry report by the enquiry officer and after the satisfaction of the respondent that the charges leveled against the petitioner and other co-workers stood proved in the enquiry, the respondent concurred with the findings of the enquiry officer, as such the copy of the enquiry report along-with show cause notice was issued to the petitioner and other co-workers to the proposed punishment of dismissal and thereafter the petitioner along-with his co-workers were dismissed from the employment of the respondent company *vide* letter dated 27.3.2010. However, *vide* order dated 2.12.2015, this Court had set aside and quashed the enquiry conducted by the enquiry officer being violative of principles of natural justice and the respondent was afforded opportunity to lead evidence on merits in order to prove the misconduct as alleged in the chargesheet dated 5.9.2009 against the petitioner. At this stage, it would be pertinent to reproduce the joint chargesheet dated 5.9.2009 Ex. R-13 issued against the petitioner and other workers namely Mohan Lal, Surender Pal, Rakesh Kumar, Vikram, Nirmal Kumar, Ram Chand, Ms. Surjit Kumari, Sandeep Kumar and Prithi Chand with respect to the alleged misconduct which is in Hindi and the same reads as under:

“आप पर आरोप है कि आप लोगों ने दिनांक 21-8-2009 को बिना सूचना एक साथ मिलकर तथा एक राय होकर लगभग 3 बजे अचानक काम रोक दिया और ठेकेदार के श्रमिकों को भी काम नहीं करने दिया जिसके लिए प्रबंधकों ने नोटिस भी जारी किया कि आप लोग “काम नहीं तो वेतन नहीं” के आधार पर उस अवधि के वेतन के अधिकारी नहीं हैं।

दिनांक 24-8-2009 को प्रबंधकों ने वेतन वृद्धि घोषित की जिसका घोषित पत्र नोटिस बोर्ड पर लगाया गया।

आप सभी दिनांक 25-8-2009 को सुबह फैक्ट्री के अंदर आये परन्तु अपने कार्य स्थल पर नहीं पहुंचे। आप लोगों ने कार्य स्थल छोड़कर अन्य विभागों में जाकर श्रमिकों को काम न करने के लिए उकसाया एवं भड़काया। आप लोगों ने अपना कार्य शुरू नहीं किया। आप लोगों के उकसाने एवं भड़काने से अन्य श्रमिकों ने आप लोगों की अगुवाई में, फैक्ट्री के अंदर रहकर बिना सूचना अनुचित एवं गैरकानूनी हड़ताल की। प्रबंधकों के द्वारा आप लोगों को समझाया गया कि आप लोग श्रमिकों को अनुचित एवं गैरकानूनी हड़ताल के लिए न उकसायें और हड़ताल समाप्त कर काम पर वापस आयें क्योंकि इससे उत्पादन का भी नुकसान हो रहा है। प्रतिष्ठान की आर्थिक हालत पहले से खराब है लेकिन आप लोगों ने प्रबंधकों का कहना नहीं माना और आप सभी ने न केवल कम्पनी के श्रमिकों को बल्कि ठेकेदार के श्रमिकों को भी काम नहीं करने दिया। दोपहर के बाद आप लोगों ने उन श्रमिकों के साथ हाथापाई की जो फैक्ट्री में बना हुआ तैयार माल डिलीवरी के लिए ले जा रहे थे और आप लोगों ने तैयार माल फैक्ट्री से बाहर नहीं जाने दिया तथा धमकी दी कि जो भी माल बाहर लेकर जायेगा उसके हाथ पैर तोड़ देंगे। शाम को अपनी पाली समाप्त होने के बाद आप सभी फैक्ट्री गेट के पास अंदर ही इक्ठ्ठे हो गए और कहा कि आप लोग फैक्ट्री नहीं चलने देंगे। आप लोगों के उग्र एवं विध्वंसक रवैये को देखते हुए पुलिस बुलानी पड़ी। पुलिस के आने के बाद आप लोग फैक्ट्री से बाहर गये।

आप लोगों के द्वारा एक साथ मिलकर एवं एक राय होकर दिनांक 25-8-2009 को किये गए दुराचरणों के लिए प्रबंधकों ने आपको, अपने पत्र दिनांक 25-8-2009 द्वारा कार्य से निलंबित कर दिया। आप लोगों को निलंबन आदेश दिनांक 26-8-2009 को सुबह लगभग 8.30 बजे फैक्ट्री गेट पर दिया गया। लेकिन आप लोगों ने निलंबन आदेश पढ़ कर लेने से मना कर दिया तदोपरान्त निलंबन आदेशों को गेट पर लगा दिया गया। दिनांक 26-8-2009 को आप सभी निलंबित श्रमिकों ने गेट पर दूसरे श्रमिकों को भी रोक लिया तथा धमकाया कि जो काम पर जाएगा उसके हाथ पैर तोड़ दिए जाएंगे, जिसके कारण कुछ श्रमिक जो कार्य पर जाना चाहते थे वे भी आप लोगों की धमकियों की वजह से कार्य पर नहीं गए।

प्रबंधकों द्वारा समस्त हड़ताली श्रमिक को बार-बार समझाया गया परन्तु इसके बावजूद भी हड़ताली श्रमिक आप सभी के उकसाने व भड़काने पर हड़ताल समाप्त कर ड्यूटी पर उपस्थित नहीं हुए और वे इस बात पर अड़े रहे हैं कि जब तक निलंबित श्रमिकों का निलंबन वापस नहीं लिए जाता कोई भी ड्यूटी पर नहीं जाएगा और हड़ताल जारी रहेगी। आप लोगों तथा एक अन्य निलंबित श्रमिक श्री रघुवीर के साथ कुछ और श्रमिक भी दुराचरणों में लिप्त हुए। आप लोगों ने उपरोक्त दिनांक में यह भी धमकी दी कि आप लोग कम्पनी नहीं चलने देंगे, जो भी काम पर जाएगा उन्हें मारेंगे-पीटेंगे और देखते हैं कि कैसे फैक्ट्री से बाहर निकलते हैं।

दिनांक 27-8-2009 को संराधन कार्यवाही के दौरान आप सभी निलंबित श्रमिकों ने संराधन कार्यवाही समाप्त होने के समय, कम्पनी के अधिकारी को जो संराधन कार्यवाही में हिस्सा लेने गए थे, धमकी दी कि उन्हें लेबर ऑफिस से बाहर नहीं जाने देंगे एवं उनकी गाड़ी भी तोड़ दी जायेगी। जिसकी सूचना पुलिस विभाग को भी दी गयी थी। आप लोगों के उकसाने व भड़काने से दिनांक 25-8-2009 को दोनों पालियों के श्रमिक हड़ताल पर रहे और दिनांक 26-8-2009 से फैक्ट्री के बाहर रहकर अपनी अनुचित एवं गैरकानूनी हड़ताल दिनांक 28-8-2009 तक जारी रखी। आप सभी के उपरोक्त कार्य गंभीर दंडनीय दुराचरण है। आप को आदेश है कि आप इस आरोप पत्र की प्राप्ति के तीन दिन के अंदर उत्तर दें कि क्यों न आप के विरुद्ध अनुशासनात्मक कार्यवाही की जाए। अगर आप का उत्तर निर्धारित समय में प्राप्त नहीं हुआ तो यह समझा जाएगा कि आपको आरोप स्वीकार है तथा तदनुसार कार्यवाही की जायेगी।

मामले के अंतिम निपटारे तक आपका निलंबन आदेश प्रभावी रहेगा।”

17. Now, the question which arises for consideration before this Court is as to whether the respondent has been able to prove the misconduct allegedly committed by the petitioner as per the aforesaid chargesheet. The first charge against the petitioner is that on 21.8.2009, at about 3.00 P.M., the petitioner along-with the other co-workers named in the chargesheet stopped the workers of the factory including the workers of the contractor from doing the work for which the management had also issued the notice to the workers that they would not be entitled for the wages for the period during which they had not worked on the principle of “no work no wage”. However, to prove the aforesaid charge, except for the statements of RW-1, RW-2 and RW-3, no other cogent and satisfactory evidence on record has been led by the respondent. Though, RW-1 has tendered in evidence notice dated 21.8.2009, Ex. R-2 but no reliance can be placed upon the same because a copy of the same has also been allegedly endorsed to the Labour Department but neither any record nor any witness from the Labour Department has been produced by the respondent in order to prove that this notice was also sent to the Labour Department. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. The petitioner has specifically denied in cross-examination that on 21.8.2009 at 3.00 P.M. the workers have stopped the work on their instigation. Neither any independent witness nor any worker of the factory or any worker of the contractor has been examined by the management to prove the aforesaid charge against the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charge has not been proved by the respondent against the petitioner.

18. The second charge against the petitioner and other co-workers named in the chargesheet is that on 25.8.2009, the petitioner along-with his associates named in the chargesheet instigated all the workers of the factory including the workers of the contractor to go on strike as a result of which all the workers went on illegal strike and also manhandled some of the workers and threatened them with dire consequences as a result of which the Police had to be called. To prove the aforesaid charge, the respondent had examined RW-1 to RW-3 but except for their bald statements, no other evidence has been led by the respondent to prove the aforesaid charge against the petitioner. Neither any independent witness nor any factory worker has been examined by the respondent in order to prove the aforesaid charge against the petitioner. Moreover, no worker of the

contractor has been produced in the witness box. Though, the charge against the petitioner is that due to the illegal strike, the police had to be called, however, no record from the Police Station has been produced before this Court. RW-1 has admitted in cross-examination that they had not made any complaint to the Police that the workers had stopped the ingress of the vehicles on 25.8.2009 into the factory. RW-1 also stated in cross-examination that a complaint was made to the Police, however, for the reasons best known to the respondent neither any witness from the Police station has been examined nor any record from the Police station has been produced. RW-1 has also tendered in evidence complaint dated 25.8.2009 Ex. R-5 allegedly written to the SHO Police Station Barotiwala for police protection, however, there is nothing on record as to what had happened thereafter and what action had been taken by the Police on the aforesaid complaint Ex. R-5. There is no evidence on record as to whether the Police had arrived at the factory and whether Police protection had been given on the complaint Ex. R-5. Similarly, RW-1 has tendered in evidence copy of complaint dated 25.8.2009 Ex. R-3 addressed to Labour Officer, Baddi regarding the illegal strike but no record from the office of Labour Officer Baddi has been produced before this Court. Therefore, in the absence of any record from the SHO Police Station Barotiwala and Labour Officer Baddi, no reliance can be placed upon the complaints Ex. R-3 & Ex. R-5. Hence, in the absence of any cogent and satisfactory evidence on record the aforesaid charge against the petitioner has also not been proved.

19. The next charge against the petitioner is that on 25.8.2009, the petitioner and other workers named in the chargesheet were suspended and on 26.8.2009 at 8.30 A.M. they refused to receive the suspension order and thereafter the copy of the same was pasted on the factory gate and on 26.8.2009 all the suspended workers have stopped the workers from doing the work. Further charge against the petitioner is that on 27.8.2009, after the conclusion of the conciliation proceedings the petitioner and other suspended workers had threatened the officials of the company who had attended the conciliation proceedings for which a complaint was also made to the Police. They have also been charged that due to their instigation, the workers of both the shifts remained on illegal strike on 25.8.2009 and they continued their strike *w.e.f.* 26.8.2009 to 28.8.2009. To prove the aforesaid charges, the respondent has examined RW-1 to RW-3, however, no cogent and satisfactory evidence has been led by the respondent to prove the aforesaid charges leveled against the petitioner and other workers named in the chargesheet. RW-1 stated in cross-examination that the respondent had made the complaint Ex. R-8 to the Labour Officer, Baddi regarding the illegal strike and also to the Labour Commissioner *vide* letter Ex. R-6, however, the respondent has failed to prove that the letter Ex. R-6 was sent to the Labour Commissioner. RW-1 admitted in cross-examination that the letter Ex. R-6 might have been sent through registered post but the postal receipt *qua* the same was not annexed. Though, RW-1 has stated that the letter Ex. R-8 was sent to the Labour Officer by hand but admittedly there is no endorsement/receipt of Labour Officer on the letter Ex. R-8. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the letters Ex. R-6 and Ex. R-8 regarding the illegal strike were received by the Labour Officer and Labour Commissioner respectively. Similarly, no witness from the Police Station Barotiwala has been examined and no record of Police Station Barotiwala has been produced before this Court in order to prove the letter Ex. R-7 written to the SHO Police Station Barotiwala regarding the illegal strike of the workers. There is also nothing on record to show that what action has been taken by the Police Station Barotiwala upon the letter Ex. R-7. RW-1 also admitted in cross-examination that they have not made any complaint to the Police regarding the threat given by the workers after the conciliation proceedings on 27.8.2009. Furthermore, RW-1 to RW-3 admitted in their cross-examination that the management had not received any complaint from the contractor regarding the stopping of work by the petitioner and other suspended workers. RW-2 also admitted that the other workers have not made any complaint in writing that they had been stopped by the petitioner for doing the work and to go on strike. Similarly, there is no evidence on record to suggest that during the period of alleged strike there was no production in the factory. RW-1 admitted that the respondent had not annexed any record of “no production” in the factory on

21.8.2009 and from 25.8.2009 to 27.8.2009. Though, RW-1 to RW-3 stated in cross-examination that they had deducted the wages of the workers for the period of strike but admittedly no record has been produced by the respondent regarding the deduction of wages during the period of strike and no record has been produced regarding the fact that the goods have not been delivered to the dealers during the period of strike. Neither any independent witness nor any worker has been examined to prove the aforesaid charge against the petitioner and other workers named in the chargesheet. Even, the contractor was not produced in the witness box in order to prove that his workers were stopped from doing the work by the petitioner and other workers named in the chargesheet. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charges against the petitioner and other workers named in the chargesheet have not been proved. Hence, I have no hesitation in holding that the respondent has failed to prove that due to the instigation of the petitioner and other workers named in the chargesheet, the workers went on illegal strike from 25.8.2009 to 28.9.2009 and had threatened the officials of the company

20. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the respondent has failed to prove the misconduct against the petitioner as alleged in the chargesheet dated 5.9.2009 Ex. R-13 issued by the respondent. Hence, the dismissal of the services of the petitioner on the basis of the aforesaid chargesheet is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

21. Since, I have held under issues No.1&2 above that the dismissal of the services of the petitioner by the respondent *w.e.f.* 27.3.2010 on the basis of chargesheet dated 5.9.2009 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C. 70, M/s Ritu Marbals Vs. Prab hak ant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the dismissal of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme ou rt Cases 363 titled as Kend riya Vidyalaya Sangathan and another Vs. S.C. Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his dismissal. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his dismissal. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back- wages. Accordingly, issue No.3 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 23 of 2011

Instituted on 13-6-2011

Decided on 8-5-2018

Mohal Lal s/o Shri Ram Dass, r/o Village Kalu Jhanda, P.O. Mandhala, Tehsil Kasauli,
District solan, H.P. *..Petitioner.*

Vs.

M/s Biogenetic Drugs Pvt. Ltd., Village Jharmajri, Baddi, District Solan, H.P. through its
Managing Director *..Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate

For respondent : Shri Rajiv Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether the dismissal of the services of Shri Mohan Lal s/o Shri Ram Dass, Helper by the Managing Director, M/s Biogenetic Drugs Private Limited, Village Jharmazri,

Baddi, District Solan, H.P. w.e.f. 27.3.2010 after serving charge sheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named helper is entitled to from the concerned management?”

2. Briefly the case of the petitioner is that he was engaged by the respondent company w.e.f. 28.6.2005 and worked as such till 27.3.2010 continuously. His services had been terminated on 27.3.2010 without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). On 25.8.2009, the respondent company asked the petitioner and other workers to leave the factory and did not allow them to work in the factory and only the workmen employed through contractor had been allowed to work. On 26.8.2009, the petitioner along-with other workers came to the factory for work but the security officer stopped them to enter the factory and the gate of the factory was closed. The suspension order of the petitioner and other workers had already been pasted on the factory gate. On 26.8.2009, when the company had not allowed the petitioner and other workers to enter the factory, they made a joint complaint to the Labour Officer, Baddi upon which Labour Inspector came in the factory and made the inspection and summoned the respondent to his office for conciliation on 27.8.2009 on which date one official of the respondent handed over the letter of the company to the Labour Inspector. On 28.9.2009, on the intervention of the Labour Inspector all other workers except the suspended workers including petitioner were allowed by the respondent company to work. It is further asserted that on 5.9.2009, the petitioner received the joint chargesheet from the respondent which was replied by him and thereafter the enquiry was conducted which was not fair and on the report of enquiry officer, the petitioner was asked to file the comments to the show cause and after receiving the reply of the petitioner, his services had been terminated. The petitioner never instigated any worker to go on strike and did not cause the loss to the company in any manner. The enquiry officer right from very beginning started favouring the respondent, who used to right down the things which favoured the company. The petitioner also gave in writing against the enquiry officer but the same was not accepted. The enquiry officer had not allowed the petitioner to lead his evidence. The enquiry officer had not conducted the enquiry in fair manner and had also not followed the principle of natural justice. The termination of the petitioner is illegal and violative of the provisions of the Industrial Disputes Act, 1947.

3. By filing reply, the respondent averred that on 21.8.2009, the petitioner along-with other workers stopped work at about 3.00 P.M. and had not allowed anyone to perform duty. On 25.8.2009, the petitioner along-with other leading workers entered the factory and went to different departments and instigated other workmen to stop their work and resort to strike and as such the petitioner along-with other leading workmen who committed grave misconducts were suspended from duty *vide* letter dated 25.8.2009. On 26.8.2009, the suspension order was given to the petitioner and seven other employees, who refused to accept the same and the same were sent through post and copies were affixed on the main gate of the factory. It is further stated that the petitioner along-with other workmen committed grave misconduct for which they were suspended from the duty and a joint chargesheet dated 5.9.2009 was issued to them and when the reply filed by the petitioner was not found satisfactory, the management decided to hold domestic enquiry in to the matter and constituted the enquiry jointly *vide* letter dated 14.9.2009. Shri Krishna Mohan Tripathi was appointed as an enquiry officer who conducted the enquiry. The enquiry officer was independent and impartial person who conducted the enquiry in fair and proper manner by following the principles of natural justice. The show cause notice was sent to the petitioner against proposed punishment of dismissal along-with the enquiry report and thereafter the petitioner was dismissed from the employment *vide* letter dated 27.3.2010. Since, all the charges leveled against the petitioner, stood proved, his services had been terminated.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent. *Vide* order dated 20.7.2013, this Court framed the following preliminary issues:

15. Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ...*OPP*.

5. Thereafter, *vide* order dated 2.12.2015, this Court decided the preliminary issue in favour of the petitioner and against the respondent by holding as under :—

“In view of my foregoing findings on preliminary issue, the enquiry conducted by the enquiry officer vide Ex. RW-1/B, is violative of principle of natural justice, hence, is hereby set aside and quashed.

6. Since, the preliminary issue was answered against the respondent, hence, on the basis of pleadings of the parties, the following issues were framed by this Court on 2.12.2015 and the respondent was afforded opportunity to lead evidence on merits in order to prove the alleged misconduct of the petitioner :—

21. Whether the petitioner has committed the misconduct as alleged in the chargesheet dated 5.9.2009 issued by the respondent? ...*OPR*.
22. If issue No.1 is proved in affirmative, whether the dismissal of the petitioner is legal and justified? ...*OPR*.
23. If issue No.1 is not proved in affirmative, then to what service benefits the petitioner is entitled to? ...*OPP*.
24. Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1 : No

Issue No. 2 : No

Issue No. 3 : Entitled to reinstatement in service with seniority and continuity but without back wages.

Relief : Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. In order to prove issue No.1, the respondent has examined four RWs. Shri Bal Mohan Sharma HR/Admn. Manager appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also

tendered in evidence notice dated 10.8.2009 Ex. R-1, notice dated 21.8.2009 Ex. R-2, letter to Labour Officer Baddi, Ex. R-3, notice dated 25.8.2009 Ex. R-4, letter to SHO Ex. R-5, notice dated 28.8.2009 Ex. R-6, letter dated 27.8.2009 Ex. R-7, letter dated 28.8.2009 Ex. R-8, letter dated 29.8.2009 Ex. R-9, notice dated 21.2.2008 Ex. R-10, notice dated 22.2.2009 Ex. R-11, notice dated 23.2.2008 Ex. R-12, chargesheet dated 5.9.2009 Ex. R-13, settlement dated 3.3.2008 Ex. R-14 and letter dated 29.8.2016 to S.P Baddi Ex. R-15. In cross-examination, he admitted that the petitioner was engaged as a helper and he worked continuously till the date of his termination. He further admitted that the demand notice was raised by the workers in the year, 2009 for increase in the wages. He denied that the workers had worked throughout the day on 21.8.2009. He admitted that on 24.8.2009, the respondent had ordered the increase in the wages of the workers. He denied that on 25.8.2009, all the workers were stopped by the respondent at the main gate of the factory. He further denied that the workers never went on strike in the month of August, 2009. He admitted that no show cause notice was issued to the petitioner prior to the issuance of suspension order dated 26.8.2009. He denied that the work and conduct of the petitioner remained always satisfactory. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that regular workers were stopped by the respondent and contractual workers were allowed to work in the month of August, 2009. He also denied that the petitioner had never instigated any worker to go on strike. He admitted that the labour inspector visited the factory on 28.8.2009 and all the workers except the chargesheeted workers including the petitioner were allowed to resume the duties. He denied that false charges have been leveled against the petitioner to remove him from the job illegally. He further denied that the petitioner had never indulged in any misconduct and illegal activity. He admitted that the petitioner had completed 240 days in preceding twelve months.

11. Shri Arun Thakur, HR Officer stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he also reiterated almost all the averment as made in the reply. In cross-examination, he denied that the petitioner along-with other chargesheeted workers were not addressing the workers on 21.8.2009 and have never raised any slogans in the factory premises against the management. He denied that the workers had raised a demand to increase their wages. He further denied that the workers never went on strike on 21 and 25 to 27.8.2009. He also denied that the petitioner and other chargesheeted workers have never instigated any worker to go on strike. He denied that the respondent had stopped the workers at the main gate of the factory from doing the work. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that the Labour Inspector had visited the factory in the month of August, 2009 and found the management at fault. He admitted that the petitioner and other chargesheeted workers used to raise the demands of the workers before the management. He denied that the petitioner had never indulged in any misconduct and illegal activity.

12. RW-3 Shri Dalip Singh, Packing Manager also tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he stated similar facts as stated by RW-1 and RW-2 in their cross-examination.

13. Shri Surinder Singh Bisht, Labour Inspector, Baddi appeared into the witness box as RW-4 to depose that he has not brought the summoned record as there is no such record found in their office. He further stated that notice Ex. R-1 was signed by Shri Puran Chand Thakur, the then Labour Inspector, Baddi. In cross-examination, he admitted that a file is maintained in their office regarding the conciliation proceedings of any case. He further admitted that in the notice Ex. R-1, it has not been requested to their office to initiate conciliation Proceedings.

14. On the other hand the petitioner examined Shri Harmeet Singh as PW-1, who deposed that he had worked as an operator with the respondent from the year, 2006 till the year, 2010. He further deposed that he was present in the factory on 21.8.2009 and the petitioner had never stopped him or any other worker from doing the duty and on 24.8.2009, he was also present in the factory and the petitioner had never misbehaved with any official on that day and had never used any foul language against any of the official. He also stated that the petitioner and other office bearers of the union used to espouse the cause of the workers before the management including the enhancement of bonus and the services of the petitioner were terminated as he along-with other office bearers of the union raised the demands of the workers. In cross-examination, he denied that on 10.8.2009, all the workers have gathered outside the canteen and stopped the work with the demand to raise their salary. He further denied that the petitioner along-with other workers namely Raghuvir, Vikram, Surjit Kumari, Surender Pal, Sandeep Kumar, Prithi Chand and Rakesh Kumar were leading and instructing the other workers to go on illegal strike. He also denied that on 21.8.2009 at about 3.00 P.M., the workers have stopped the work at the instance of the petitioner and aforesaid workers. He denied that on 23rd and 24th August, 2009, the workers slowed down the production. He further denied that the workers were not allowed to enter inside the factory by the petitioner and aforesaid workers from 25.8.2009 to 28.8.2009.

15. The petitioner himself appeared into the witness box as PW-2 and tendered in evidence his affidavit Ex. P-1. In cross-examination, he denied that on 21.2.2008, the workers went on the strike. He further denied that no notice of strike was given to the management. He also denied that on 21.2.2008, he along-with other workers namely Raghubir, Surender Pal, Sandeep Kumar, Surjeet Kumari, Prithi Chand and Vikram instigated the other workers to go on strike. He denied that they had told the management if their wages were not increased then they will not allow to run the factory. He admitted that prior to 21.2.2008, they have raised a demand charter on which the Labour Inspector-cum-Conciliation Officer started the conciliation proceedings and the said proceedings were pending on 21.2.2008. He denied that after 21.2.2008 a chargesheet was issued to him and aforesaid workers and were suspended. He further denied that after the settlement Ex. R-14 they were taken back in service and the chargesheet was dropped. He also denied that on 10.8.2009 at about 1.30 P.M., he along-with the aforesaid workers instigated all the workers to stop the work. He denied that on 21.8.2009, at about 3.00 P.M. the workers have stopped the production on their instigation and thereafter the senior officials of the company had counseled them and told them that their demands would be considered. He admitted that he along-with aforesaid workers were suspended on 26.8.2009 and notice to this effect was affixed at the factory gate. He denied that the on 28.8.2009 also they had continued the illegal strike. He further denied that chargesheet Ex. R-13 was issued to him. He also denied that he was dismissed from service due to the charges leveled in the chargesheet Ex. R-13. He denied that due to their illegal strike there was no manufacturing process in the factory.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner along-with other workers were issued joint chargesheet dated 5.9.2009 and since the explanation submitted by the petitioner was not found satisfactory by the respondent, a domestic enquiry was ordered to be conducted and accordingly Mr. K. M Tripathi, Advocate was appointed as an enquiry officer to enquire into the charges leveled against them in respect of joint chargesheet. After the conclusion of enquiry, the enquiry officer had submitted his report dated 5.2.2010, Ex. RW-1/B. On the receipt of the enquiry report by the enquiry officer and after the satisfaction of the respondent that the charges leveled against the petitioner and other co-workers stood proved in the enquiry, the respondent concurred with the findings of the enquiry officer, as such the copy of the enquiry report along-with show cause notice was issued to the petitioner and other co-workers to the proposed punishment of dismissal and thereafter the petitioner along-with his co-workers were dismissed from the employment of the respondent company *vide* letter dated 27.3.2010. However, *vide* order dated 2.12.2015, this Court

had set aside and quashed the enquiry conducted by the enquiry officer being violative of principles of natural justice and the respondent was afforded opportunity to lead evidence on merits in order to prove the misconduct as alleged in the chargesheet dated 5.9.2009 against the petitioner. At this stage, it would be pertinent to reproduce the joint chargesheet dated 5.9.2009 Ex. R-13 issued against the petitioner and other workers namely Mohan Lal, Surender Pal, Rakesh Kumar, Vikram, Nirmal Kumar, Ram Chand, Ms. Surjit Kumari, Sandeep Kumar and Prithi Chand with respect to the alleged misconduct which is in Hindi and the same reads as under :—

“आप पर आरोप है कि आप लोगों ने दिनांक 21-8-2009 को बिना सूचना एक साथ मिलकर तथा एक राय होकर लगभग 3 बजे अचानक काम रोक दिया और ठेकेदार के श्रमिकों को भी काम नहीं करने दिया जिसके लिए प्रबंधकों ने नोटिस भी जारी किया कि आप लोग “काम नहीं तो वेतन नहीं” के आधार पर उस अवधि के वेतन के अधिकारी नहीं है।

दिनांक 24-8-2009 को प्रबंधकों ने वेतन वृद्धि घोषित की जिसका घोषित पत्र नोटिस बोर्ड पर लगाया गया।

आप सभी दिनांक 25-8-2009 को सुबह फैक्ट्री के अंदर आये परन्तु अपने कार्य स्थल पर नहीं पहुंचे। आप लोगों ने कार्य स्थल छोड़कर अन्य विभागों में जाकर श्रमिकों को काम न करने के लिए उकसाया एवं भड़काया। आप लोगों ने अपना कार्य शुरू नहीं किया। आप लोगों के उकसाने एवं भड़काने से अन्य श्रमिकों ने आप लोगों की अगुवाई में, फैक्ट्री के अंदर रहकर बिना सूचना अनुचित एवं गैर-कानूनी हड़ताल की। प्रबंधकों के द्वारा आप लोगों को समझाया गया कि आप लोग श्रमिकों को अनुचित एवं गैर-कानूनी हड़ताल के लिए न उकसायें और हड़ताल समाप्त कर काम पर वापस आये क्योंकि इससे उत्पादन का भी नुकसान हो रहा है। प्रतिष्ठान की आर्थिक हालत पहले से खराब है लेकिन आप लोगों ने प्रबंधकों का कहना नहीं माना और आप सभी ने न केवल कम्पनी के श्रमिकों को बल्कि ठेकेदार के श्रमिकों को भी काम नहीं करने दिया। दोपहर के बाद आप लोगों ने उन श्रमिकों के साथ हाथापाई की जो फैक्ट्री में बना हुआ तैयार माल डिलीवरी के लिए ले जा रहे थे और आप लोगों ने तैयार माल फैक्ट्री से बाहर नहीं जाने दिया तथा धमकी दी कि जो भी माल बाहर लेकर जायेगा उसके हाथ पैर तोड़ देंगे। शाम को अपनी पाली समाप्त होने के बाद आप सभी फैक्ट्री गेट के पास अंदर ही इक्ट्ठे हो गए और कहा कि आप लोग फैक्ट्री नहीं चलने देंगे। आप लोगों के उग्र एवं विध्वंसक रवैये को देखते हुए पुलिस बुलानी पड़ी। पुलिस के आने के बाद आप लोग फैक्ट्री से बाहर गये।

आप लोगों के द्वारा एक साथ मिलकर एवं एक राय होकर दिनांक 25-8-2009 को किये गए दुराचरणों के लिए प्रबंधकों ने आपको, अपने पत्र दिनांक 25-8-2009 द्वारा कार्य से निलंबित कर दिया। आप लोगों को निलंबन आदेश दिनांक 26-8-2009 को सुबह लगभग 8.30 बजे फैक्ट्री गेट पर दिया गया। लेकिन आप लोगों ने निलंबन आदेश पढ़ कर लेने से मना कर दिया तदोपरान्त निलंबन आदेशों को गेट पर लगा दिया गया। दिनांक 26-8-2009 को आप सभी निलंबित श्रमिकों ने गेट पर दूसरे श्रमिकों को भी रोक लिया तथा धमकाया कि जो काम पर जाएगा उसके हाथ पैर तोड़ दिए जाएंगे, जिसके कारण कुछ श्रमिक जो कार्य पर जाना चाहते थे वे भी आप लोगों की धमकियों की वजह से कार्य पर नहीं गए।

प्रबंधकों द्वारा समस्त हड़ताली श्रमिकों को बार-बार समझाया गया परन्तु इसके बाबजूद भी हड़ताली श्रमिक आप सभी के उकसाने व भड़काने पर हड़ताल समाप्त कर ड्यूटी पर उपस्थित नहीं हुए और वे इस बात पर अड़े रहे हैं कि जब तक निलंबित श्रमिकों का निलंबन वापस नहीं लिए जाता कोई भी ड्यूटी पर नहीं जाएगा और हड़ताल जारी रहेगी। आप लोगों तथा एक अन्य निलंबित श्रमिक श्री रघुवीर के साथ कुछ और श्रमिक भी दुराचरणों में लिप्त हुए। आप लोगों ने उपरोक्त दिनांक में यह भी धमकी दी कि आप लोग कम्पनी नहीं चलने देंगे, जो भी काम पर जाएगा उन्हें मारेंगे-पीटेंगे और देखते हैं कि कैसे फैक्ट्री से बाहर निकलते हैं।

दिनांक 27-8-2009 को संराधन कार्यवाही के दौरान आप सभी निलंबित श्रमिकों ने संराधन कार्यवाही समाप्त होने के समय, कम्पनी के अधिकारी को जो संराधन कार्यवाही में हिस्सा लेने गए थे, धमकी दी कि उन्हें लेबर ऑफिस से बाहर नहीं जाने देंगे एवं उनकी गाड़ी भी तोड़ दी जायेगी। जिसकी सूचना पुलिस विभाग को भी दी गयी थी।

आप लोगों के उकसाने व भड़काने से दिनांक 25-8-2009 को दोनों पालियों के श्रमिक हड़ताल पर रहे और दिनांक 26-8-2009 से फैक्ट्री के बाहर रहकर अपनी अनुचित एवं गैरकानूनी हड़ताल दिनांक 28-8-2009 तक जारी रखी। आप सभी के उपरोक्त कार्य गंभीर दंडनीय दुराचरण है। आप को आदेश है कि आप इस आरोप पत्र की प्राप्ति के तीन दिन के अंदर उत्तर दें कि क्यों न आप के विरुद्ध अनुशासनात्मक कार्यवाही की जाए। अगर आप का उत्तर निर्धारित समय में प्राप्त नहीं हुआ तो यह समझा जाएगा कि आपको आरोप स्वीकार है तथा तदनुसार कार्यवाही की जायेगी।

मामले के अंतिम निपटारे तक आपका निलंबन आदेश प्रभावी रहेगा।”

17. Now, the question which arises for consideration before this Court is as to whether the respondent has been able to prove the misconduct allegedly committed by the petitioner as per the aforesaid chargesheet. The first charge against the petitioner is that on 21.8.2009, at about 3.00 P.M., the petitioner along-with the other co-workers named in the chargesheet stopped the workers of the factory including the workers of the contractor from doing the work for which the management had also issued the notice to the workers that they would not be entitled for the wages for the period during which they had not worked on the principle of “no work no wage”. However, to prove the aforesaid charge, except for the statements of RW-1, RW-2 and RW-3, no other cogent and satisfactory evidence on record has been led by the respondent. Though, RW-1 has tendered in evidence notice dated 21.8.2009, Ex. R-2 but no reliance can be placed upon the same because a copy of the same has also been allegedly endorsed to the Labour Department but neither any record nor any witness from the Labour Department has been produced by the respondent in order to prove that this notice was also sent to the Labour Department. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. The petitioner has specifically denied in cross-examination that on 21.8.2009 at 3:00 P.M. the workers have stopped the work on their instigation. Neither any independent witness nor any worker of the factory or any worker of the contractor has been examined by the management to prove the aforesaid charge against the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charge has not been proved by the respondent against the petitioner.

18. The second charge against the petitioner and other co-workers named in the chargesheet is that on 25.8.2009, the petitioner along-with his associates named in the chargesheet instigated all the workers of the factory including the workers of the contractor to go on strike as a result of which all the workers went on illegal strike and also manhandled some of the workers and threatened them with dire consequences as a result of which the Police had to be called. To prove the aforesaid charge, the respondent had examined RW-1 to RW-3 but except for their bald statements, no other evidence has been led by the respondent to prove the aforesaid charge against the petitioner. Neither any independent witness nor any factory worker has been examined by the respondent in order to prove the aforesaid charge against the petitioner. Moreover, no worker of the contractor has been produced in the witness box. Though, the charge against the petitioner is that due to the illegal strike, the police had to be called, however, no record from the Police Station has been produced before this Court. RW-1 has admitted in cross-examination that they had not made any complaint to the Police that the workers had stopped the ingress of the vehicles on 25.8.2009 into the factory. RW-1 also stated in cross-examination that a complaint was made to the Police, however, for the reasons best known to the respondent neither any witness from the Police station has been examined nor any record from the Police station has been produced. RW-1 has also tendered in evidence complaint dated 25.8.2009 Ex. R-5 allegedly written to the SHO Police Station Barotiwala for police protection, however, there is nothing on record as to what had happened thereafter and what action had been taken by the Police on the aforesaid complaint Ex. R-5. There is no evidence on record as to whether the Police had arrived at the factory and whether Police protection had been given on the complaint Ex. R-5. Similarly, RW-1 has tendered in

evidence copy of complaint dated 25.8.2009 Ex. R-3 addressed to Labour Officer, Baddi regarding the illegal strike but no record from the office of Labour Officer Baddi has been produced before this Court. Therefore, in the absence of any record from the SHO Police Station Barotiwala and Labour Officer Baddi, no reliance can be placed upon the complaints Ex. R-3 & Ex. R-5. Hence, in the absence of any cogent and satisfactory evidence on record the aforesaid charge against the petitioner has also not been proved.

19. The next charge against the petitioner is that on 25.8.2009, the petitioner and other workers named in the chargesheet were suspended and on 26.8.2009 at 8.30 A.M. they refused to receive the suspension order and thereafter the copy of the same was pasted on the factory gate and on 26.8.2009 all the suspended workers have stopped the workers from doing the work. Further charge against the petitioner is that on 27.8.2009, after the conclusion of the conciliation proceedings the petitioner and other suspended workers had threatened the officials of the company who had attended the conciliation proceedings for which a complaint was also made to the Police. They have also been charged that due to their instigation, the workers of both the shifts remained on illegal strike on 25.8.2009 and they continued their strike *w.e.f.* 26.8.2009 to 28.8.2009. To prove the aforesaid charges, the respondent has examined RW-1 to RW-3, however, no cogent and satisfactory evidence has been led by the respondent to prove the aforesaid charges leveled against the petitioner and other workers named in the chargesheet. RW-1 stated in cross-examination that the respondent had made the complaint Ex. R-8 to the Labour Officer, Baddi regarding the illegal strike and also to the Labour Commissioner *vide* letter Ex. R-6, however, the respondent has failed to prove that the letter Ex. R-6 was sent to the Labour Commissioner. RW-1 admitted in cross-examination that the letter Ex. R-6 might have been sent through registered post but the postal receipt *qua* the same was not annexed. Though, RW-1 has stated that the letter Ex. R-8 was sent to the Labour Officer by hand but admittedly there is no endorsement/receipt of Labour Officer on the letter Ex. R-8. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the letters Ex. R-6 and Ex. R-8 regarding the illegal strike were received by the Labour Officer and Labour Commissioner respectively. Similarly, no witness from the Police Station Barotiwala has been examined and no record of Police Station Barotiwala has been produced before this Court in order to prove the letter Ex. R-7 written to the SHO Police Station Barotiwala regarding the illegal strike of the workers. There is also nothing on record to show that what action has been taken by the Police Station Barotiwala upon the letter Ex. R-7. RW-1 also admitted in cross-examination that they have not made any complaint to the Police regarding the threat given by the workers after the conciliation proceedings on 27.8.2009. Furthermore, RW-1 to RW-3 admitted in their cross-examination that the management had not received any complaint from the contractor regarding the stopping of work by the petitioner and other suspended workers. RW-2 also admitted that the other workers have not made any complaint in writing that they had been stopped by the petitioner for doing the work and to go on strike. Similarly, there is no evidence on record to suggest that during the period of alleged strike there was no production in the factory. RW-1 admitted that the respondent had not annexed any record of "no production" in the factory on 21.8.2009 and from 25.8.2009 to 27.8.2009. Though, RW-1 to RW-3 stated in cross-examination that they had deducted the wages of the workers for the period of strike but admittedly no record has been produced by the respondent regarding the deduction of wages during the period of strike and no record has been produced regarding the fact that the goods have not been delivered to the dealers during the period of strike. Neither any independent witness nor any worker has been examined to prove the aforesaid charge against the petitioner and other workers named in the chargesheet. Even, the contractor was not produced in the witness box in order to prove that his workers were stopped from doing the work by the petitioner and other workers named in the chargesheet. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charges against the petitioner and other workers named in the chargesheet have not been proved. Hence, I have no hesitation in

holding that the respondent has failed to prove that due to the instigation of the petitioner and other workers named in the chargesheet, the workers went on illegal strike from 25.8.2009 to 28.9.2009 and had threatened the officials of the company

20. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the respondent has failed to prove the misconduct against the petitioner as alleged in the chargesheet dated 5.9.2009 Ex. R-13 issued by the respondent. Hence, the dismissal of the services of the petitioner on the basis of the aforesaid chargesheet is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

21. Since, I have held under issues No.1 & 2 above that the dismissal of the services of the petitioner by the respondent *w.e.f.* 27.3.2010 on the basis of chargesheet dated 5.9.2009 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJS. C 70, M/s Ritu Marbals Vs. Prabhakaran t Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the dismissal of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C. Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his dismissal. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his dismissal. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back- wages. Accordingly, issue No. 3 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of

the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 24 of 2011

Instituted on 13-6-2011

Decided on 8-5-2018

Sandeep Kumar s/o Shri Parmod Kumar r/o Village & P.O Sohari, District Hamirpur, H.P.
..Petitioner.

V/S.

M/s Biogenetic Drugs Pvt. Ltd., Village Jharmajri, Baddi, District Solan, HP through its
Managing Director. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K Khidtta, Advocate

For respondent : Shri Rajiv Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether the dismissal of the services of Shri Sandeep Kumar S/o Shri Parmod Kumar, Operator, by the Managing Director, M/s Biogenetic Drugs Private Limited, Village Jharmazri, Baddi, District Solan, H.P. w.e.f. 27.3.2010 after serving charge sheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named operator is entitled to from the concerned management?”

2. Briefly, the case of the petitioner is that he was engaged by the respondent company w.e.f. 3.8.2006 and worked as such till 27.3.2010 continuously. His services had been terminated on 27.3.2010 without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). On 25.8.2009, the respondent company asked the petitioner and other workers to leave the factory and did not allow them to work in the factory and only the workmen employed through contractor had been allowed to work. On

26.8.2009, the petitioner along-with other workers came to the factory for work but the security officer stopped them to enter the factory and the gate of the factory was closed. The suspension order of the petitioner and other workers had already been pasted on the factory gate. On 26.8.2009, when the company had not allowed the petitioner and other workers to enter the factory, they made a joint complaint to the Labour Officer, Baddi upon which Labour Inspector came in the factory and made the inspection and summoned the respondent to his office for conciliation on 27.8.2009 on which date one official of the respondent handed over the letter of the company to the Labour Inspector. On 28.9.2009, on the intervention of the Labour Inspector all other workers except the suspended workers including petitioner were allowed by the respondent company to work. It is further asserted that on 5.9.2009, the petitioner received the joint chargesheet from the respondent which was replied by him and thereafter the enquiry was conducted which was not fair and on the report of enquiry officer, the petitioner was asked to file the comments to the show cause and after receiving the reply of the petitioner, his services had been terminated. The petitioner never instigated any worker to go on strike and did not cause the loss to the company in any manner. The enquiry officer right from very beginning started favouring the respondent, who used to right down the things which favoured the company. The petitioner also gave in writing against the enquiry officer but the same was not accepted. The enquiry officer had not allowed the petitioner to lead his evidence. The enquiry officer had not conducted the enquiry in fair manner and had also not followed the principle of natural justice. The termination of the petitioner is illegal and violative of the provisions of the Industrial Disputes Act, 1947.

3. By filing reply, the respondent averred that on 21.8.2009, the petitioner along-with other workers stopped work at about 3.00 P.M. and had not allowed anyone to perform duty. On 25.8.2009, the petitioner along-with other leading workers entered the factory and went to different departments and instigated other workmen to stop their work and resort to strike and as such the petitioner along-with other leading workmen who committed grave misconducts were suspended from duty *vide* letter dated 25.8.2009. On 26.8.2009, the suspension order was given to the petitioner and seven other employees, who refused to accept the same and the same were sent through post and copies were affixed on the main gate of the factory. It is further stated that the petitioner along-with other workmen committed grave misconduct for which they were suspended from the duty and a joint chargesheet dated 5.9.2009 was issued to them and when the reply filed by the petitioner was not found satisfactory, the management decided to hold domestic enquiry in to the matter and constituted the enquiry jointly *vide* letter dated 14.9.2009. Shri Krishna Mohan Tripathi was appointed as an enquiry officer who conducted the enquiry. The enquiry officer was independent and impartial person who conducted the enquiry in fair and proper manner by following the principles of natural justice. The show cause notice was sent to the petitioner against proposed punishment of dismissal along-with the enquiry report and thereafter the petitioner was dismissed from the employment *vide* letter dated 27.3.2010. Since, all the charges leveled against the petitioner, stood proved, his services had been terminated.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent. *Vide* order dated 20.7.2013, this Court framed the following preliminary issues:

- (1) Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ...OPP.

5. Thereafter, *vide* order dated 2.12.2015, this Court decided the preliminary issue in favour of the petitioner and against the respondent by holding as under:

“In view of my foregoing findings on preliminary issue, the enquiry conducted by the enquiry officer *vide* Ex. RW-1/B, is violative of principle of natural justice, hence, is hereby set aside and quashed.

6. Since, the preliminary issue was answered against the respondent, hence, on the basis of pleadings of the parties, the following issues were framed by this Court on 2.12.2015 and the respondent was afforded opportunity to lead evidence on merits in order to prove the alleged misconduct of the petitioner.

- (1) Whether the petitioner has committed the misconduct as alleged in the chargesheet dated 5.9.2009 issued by the respondent? ..*OPR*.
- (2) If issue No.1 is proved in affirmative, whether the dismissal of the petitioner is legal and justified? ..*OPR*.
- (3) If issue No.1 is not proved in affirmative, then to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under:—

Issue No. 1:	No
Issue No. 2 :	No
Issue No. 3 :	Entitled to reinstatement in service with seniority and continuity but without back wages.
Relief :	Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. In order to prove issue No.1, the respondent has examined four RWs. Shri Bal Mohan Sharma, HR/Admn. Manager appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice dated 10.8.2009 Ex. R-1, notice dated 21.8.2009 Ex. R-2, letter to Labour Officer Baddi, Ex. R-3, notice dated 25.8.2009 Ex. R-4, letter to SHO Ex. R-5, notice dated 28.8.2009 Ex. R-6, letter dated 27.8.2009 Ex. R-7, letter dated 28.8.2009 Ex. R-8, letter dated 29.8.2009 Ex. R-9, notice dated 21.2.2008 Ex. R-10, notice dated 22.2.2009 Ex. R-11, notice dated 23.2.2008 Ex. R-12, chargesheet dated 5.9.2009 Ex. R-13, settlement dated 3.3.2008 Ex. R-14 and letter dated 29.8.2016 to S.P Baddi Ex. R-15. In cross-examination, he admitted that the petitioner was engaged as a helper and he worked continuously till the date of his termination. He further admitted that the demand notice was raised by the workers in the year, 2009 for increase in the wages. He denied that the workers had worked throughout the day on 21.8.2009. He admitted that

on 24.8.2009, the respondent had ordered the increase in the wages of the workers. He denied that on 25.8.2009, all the workers were stopped by the respondent at the main gate of the factory. He further denied that the workers never went on strike in the month of August, 2009. He admitted that no show cause notice was issued to the petitioner prior to the issuance of suspension order dated 26.8.2009. He denied that the work and conduct of the petitioner remained always satisfactory. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that regular workers were stopped by the respondent and contractual workers were allowed to work in the month of August, 2009. He also denied that the petitioner had never instigated any worker to go on strike. He admitted that the labour inspector visited the factory on 28.8.2009 and all the workers except the chargesheeted workers including the petitioner were allowed to resume the duties. He denied that false charges have been leveled against the petitioner to remove him from the job illegally. He further denied that the petitioner had never indulged in any misconduct and illegal activity. He admitted that the petitioner had completed 240 days in preceding twelve months.

11. Shri Arun Thakur, HR Officer stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he also reiterated almost all the averment as made in the reply. In cross-examination, he denied that the petitioner along-with other chargesheeted workers were not addressing the workers on 21.8.2009 and have never raised any slogans in the factory premises against the management. He denied that the workers had raised a demand to increase their wages. He further denied that the workers never went on strike on 21 and 25 to 27.8.2009. He also denied that the petitioner and other chargesheeted workers have never instigated any worker to go on strike. He denied that the respondent had stopped the workers at the main gate of the factory from doing the work. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that the Labour Inspector had visited the factory in the month of August, 2009 and found the management at fault. He admitted that the petitioner and other chargesheeted workers used to raise the demands of the workers before the management. He denied that the petitioner had never indulged in any misconduct and illegal activity.

12. RW-3 Shri Dalip Singh, Packing Manager also tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he stated similar facts as stated by RW-1 and RW-2 in their cross-examination.

13. Shri Surinder Singh Bisht, Labour Inspector, Baddi appeared into the witness box as RW-4 to depose that he has not brought the summoned record as there is no such record found in their office. He further stated that notice Ex. R-1 was signed by Shri Puran Chand Thakur, the then Labour Inspector, Baddi. In cross-examination, he admitted that a file is maintained in their office regarding the conciliation proceedings of any case. He further admitted that in the notice Ex. R-1, it has not been requested to their office to initiate conciliation Proceedings.

14. On the other hand the petitioner examined Shri Harmeet Singh as PW-1, who deposed that he had worked as an operator with the respondent from the year, 2006 till the year, 2010. He further deposed that he was present in the factory on 21.8.2009 and the petitioner had never stopped him or any other worker from doing the duty and on 24.8.2009, he was also present in the factory and the petitioner had never misbehaved with any official on that day and had never used any foul language against any of the official. He also stated that the petitioner and other office bearers of the union used to espouse the cause of the workers before the management including the enhancement of bonus and the services of the petitioner were terminated as he along-with other office bearers of the union raised the demands of the workers. In cross-examination, he denied that on 10.8.2009, all

the workers have gathered outside the canteen and stopped the work with the demand to raise their salary. He further denied that the petitioner along-with other workers namely Raghuvir, Vikram, Surjit Kumari, Surender Pal, Mohan Lal, Prithi Chand and Rakesh Kumar were leading and instructing the other workers to go on illegal strike. He also denied that on 21.8.2009 at about 3.00 P.M., the workers have stopped the work at the instance of the petitioner and aforesaid workers. He denied that on 23rd and 24th August, 2009, the workers slowed down the production. He further denied that the workers were not allowed to enter inside the factory by the petitioner and aforesaid workers from 25.8.2009 to 28.8.2009.

15. The petitioner himself appeared into the witness box as PW-2 and tendered in evidence his affidavit Ex. P-1. In cross-examination, he denied that on 21.2.2008, the workers went on the strike. He further denied that no notice of strike was given to the management. He also denied that on 21.2.2008, he along-with other workers namely Raghubir, Surender Pal, Surjeet Kumari, Mohan Lal, Mohan Lal and Vikram instigated the other workers to go on strike. He denied that they had told the management if their wages were not increased then they will not allow to run the factory. He admitted that prior to 21.2.2008, they have raised a demand charter on which the Labour Inspector-cum-Conciliation Officer started the conciliation proceedings and the said proceedings were pending on 21.2.2008. He denied that on 21.2.2008 a chargesheet was issued to him and aforesaid workers and were suspended. He further denied that after the settlement Ex. R-14 they were taken back in service and the chargesheet was dropped. He also denied that on 10.8.2009 and at about 1.30 P.M., he along-with the aforesaid workers instigated all the workers to stop the work. He denied that on 21.8.2009, at about 3.00 P.M. the workers have stopped the production on their instigation. He admitted that he along-with aforesaid workers were suspended on 26.8.2009. He further admitted that conciliation proceedings had taken place before the Labour Inspector. He denied that when the conciliation could not materialize on 27.8.2009, then they have threatened Bal Mohan Sharma, Manager, HR with dire consequences out-side the office of Labour Inspector. He further denied that chargesheet Ex. R-13 was issued to him. He also denied that he was dismissed from service on the basis of chargesheet Ex. R-13.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner along-with other workers were issued joint chargesheet dated 5.9.2009 and since the explanation submitted by the petitioner was not found satisfactory by the respondent, a domestic enquiry was ordered to be conducted and accordingly Mr. K. M Tripathi, Advocate was appointed as an enquiry officer to enquire into the charges leveled against them in respect of joint chargesheet. After the conclusion of enquiry, the enquiry officer had submitted his report dated 5.2.2010, Ex. RW-1/B. On the receipt of the enquiry report by the enquiry officer and after the satisfaction of the respondent that the charges leveled against the petitioner and other co-workers stood proved in the enquiry, the respondent concurred with the findings of the enquiry officer, as such the copy of the enquiry report along-with show cause notice was issued to the petitioner and other co-workers to the proposed punishment of dismissal and thereafter the petitioner along-with his co-workers were dismissed from the employment of the respondent company *vide* letter dated 27.3.2010. However, *vide* order dated 2.12.2015, this Court had set aside and quashed the enquiry conducted by the enquiry officer being violative of principles of natural justice and the respondent was afforded opportunity to lead evidence on merits in order to prove the misconduct as alleged in the chargesheet dated 5.9.2009 against the petitioner. At this stage, it would be pertinent to reproduce the joint chargesheet dated 5.9.2009 Ex. R-13 issued against the petitioner and other workers namely Mohan Lal, Surender Pal, Rakesh Kumar, Vikram, Nirmal Kumar, Ram Chand, Ms. Surjit Kumari, Sandeep Kumar and Prithi Chand with respect to the alleged misconduct which is in Hindi and the same reads as under:

“आप पर आरोप है कि आप लोगों ने दिनांक 21-8-2009 को बिना सूचना एक साथ मिलकर तथा एक राय होकर लगभग 3 बजे अचानक काम रोक दिया और ठेकेदार के श्रमिकों को भी काम नहीं करने दिया

जिसके लिए प्रबंधकों ने नोटिस भी जारी किया कि आप लोग “काम नहीं तो वेतन नहीं” के आधार पर उस अवधि के वेतन के अधिकारी नहीं है।

दिनांक 24-8-2009 को प्रबंधकों ने वेतन वृद्धि घोषित की जिसका घोषित पत्र नोटिस बोर्ड पर लगाया गया।

आप सभी दिनांक 25-8-2009 को सुबह फ़ैक्ट्री के अंदर आये परन्तु अपने कार्य स्थल पर नहीं पहुंचे। आप लोगों ने कार्य स्थल छोड़कर अन्य विभागों में जाकर श्रमिकों को काम न करने के लिए उकसाया एवं भड़काया। आप लोगों ने अपना कार्य शुरू नहीं किया। आप लोगों के उकसाने एवं भड़काने से अन्य श्रमिकों ने आप लोगों की अगुवाई में, फ़ैक्ट्री के अंदर रहकर बिना सूचना अनुचित एवं गैरकानूनी हड़ताल की। प्रबंधकों के द्वारा आप लोगों को समझाया गया कि आप लोग श्रमिकों को अनुचित एवं गैरकानूनी हड़ताल के लिए न उकसायें और हड़ताल समाप्त कर काम पर वापस आये क्योंकि इससे उत्पादन का भी नुकसान हो रहा है। प्रतिष्ठान की आर्थिक हालत पहले से खराब है लेकिन आप लोगों ने प्रबंधकों का कहना नहीं माना और आप सभी ने न केवल कम्पनी के श्रमिकों को बल्कि ठेकेदार के श्रमिकों को भी काम नहीं करने दिया। दोपहर के बाद आप लोगों ने उन श्रमिकों के साथ हाथापाई की जो फ़ैक्ट्री में बना हुआ तैयार माल डिलीवरी के लिए ले जा रहे थे और आप लोगों ने तैयार माल फ़ैक्ट्री से बाहर नहीं जाने दिया तथा धमकी दी कि जो भी माल बाहर लेकर जायेगा उसके हाथ पैर तोड़ देंगे। शाम को अपनी पाली समाप्त होने के बाद आप सभी फ़ैक्ट्री गेट के पास अंदर ही इकट्ठे हो गए और कहा कि आप लोग फ़ैक्ट्री नहीं चलने देंगे। आप लोगों के उग्र एवं विध्वंसक रवैये को देखते हुए पुलिस बुलानी पड़ी। पुलिस के आने के बाद आप लोग फ़ैक्ट्री से बाहर गये।

आप लोगों के द्वारा एक साथ मिलकर एवं एक राय होकर दिनांक 25-8-2009 को किये गए दुराचरणों के लिए प्रबंधकों ने आपको, अपने पत्र दिनांक 25-8-2009 द्वारा कार्य से निलंबित कर दिया। आप लोगों को निलंबन आदेश दिनांक 26-8-2009 को सुबह लगभग 8.30 बजे फ़ैक्ट्री गेट पर दिया गया। लेकिन आप लोगों ने निलंबन आदेश पढ़ कर लेने से मना कर दिया तदोपरान्त निलंबन आदेशों को गेट पर लगा दिया गया। दिनांक 26-8-2009 को आप सभी निलंबित श्रमिकों ने गेट पर दूसरे श्रमिकों को भी रोक लिया तथा धमकाया कि जो काम पर जाएगा उसके हाथ पैर तोड़ दिए जाएंगे, जिसके कारण कुछ श्रमिक जो कार्य पर जाना चाहते थे वे भी आप लोगों की धमकियों की वजह से कार्य पर नहीं गए।

प्रबंधकों द्वारा समस्त हड़ताली श्रमिक को बार-बार समझाया गया परन्तु इसके बावजूद भी हड़ताली श्रमिक आप सभी के उकसाने व भड़काने पर हड़ताल समाप्त कर ड्यूटी पर उपस्थित नहीं हुए और वे इस बात पर अड़े रहे कि जब तक निलंबित श्रमिकों का निलंबन वापस नहीं लिए जाता कोई भी ड्यूटी पर नहीं जाएगा और हड़ताल जारी रहेगी। आप लोगों तथा एक अन्य निलंबित श्रमिक श्री रघुवीर के साथ खुश और श्रमिक भी दुराचरणों में लिप्त हुए। आप लोगों ने उपरोक्त दिनांक में यह भी धमकी दी कि आप लोग कम्पनी नहीं चलने देंगे, जो भी काम पर जाएगा उन्हें मारेंगे-पीटेंगे और देखते हैं कि कैसे फ़ैक्ट्री से बाहर निकलते हैं।

दिनांक 27-8-2009 को संराधन कार्यवाही के दौरान आप सभी निलंबित श्रमिकों ने संराधन कार्यवाही समाप्त होने के समय, कम्पनी के अधिकारी को जो संराधन कार्यवाही में हिस्सा लेने गए थे, धमकी दी कि उन्हें लेबर ऑफिस से बाहर नहीं जाने देंगे एवं उनकी गाड़ी भी तोड़ दी जायेगी। जिसकी सूचना पुलिस विभाग को भी दी गयी थी।

आप लोगों के उकसाने व भड़काने से दिनांक 25-8-2009 को दोनों पालियों के श्रमिक हड़ताल पर रहे और दिनांक 26-8-2009 से फ़ैक्ट्री के बाहर रहकर अपनी अनुचित एवं गैरकानूनी हड़ताल दिनांक 28-8-2009 तक जारी रखी। आप सभी के उपरोक्त कार्य गंभीर दंडनीय दुराचरण है। आप को आदेश है कि आप इस आरोप पत्र की प्राप्ति के तीन दिन के अंदर उत्तर दें कि क्यों न आप के विरुद्ध अनुशासनात्मक कार्यवाही की जाए। अगर आप का उत्तर निर्धारित समय में प्राप्त नहीं हुआ तो यह समझा जाएगा कि आपको आरोप स्वीकार है तथा तदनुसार कार्यवाही की जायेगी।

मामले के अंतिम निपटारे तक आपका निलंबन आदेश प्रभावी रहेगा।”

17. Now, the question which arises for consideration before this Court is as to whether the respondent has been able to prove the misconduct allegedly committed by the petitioner as per the aforesaid chargesheet. The first charge against the petitioner is that on 21.8.2009, at about 3.00 P.M., the petitioner along-with the other co-workers named in the chargesheet stopped the workers of the factory including the workers of the contractor from doing the work for which the management had also issued the notice to the workers that they would not be entitled for the wages for the period during which they had not worked on the principle of "no work no wage". However, to prove the aforesaid charge, except for the statements of RW-1, RW-2 and RW-3, no other cogent and satisfactory evidence on record has been led by the respondent. Though, RW-1 has tendered in evidence notice dated 21.8.2009, Ex. R-2 but no reliance can be placed upon the same because a copy of the same has also been allegedly endorsed to the Labour Department but neither any record nor any witness from the Labour Department has been produced by the respondent in order to prove that this notice was also sent to the Labour Department. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. The petitioner has specifically denied in cross-examination that on 21.8.2009 at 3.00 P.M. the workers have stopped the work on their instigation. Neither any independent witness nor any worker of the factory or any worker of the contractor has been examined by the management to prove the aforesaid charge against the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charge has not been proved by the respondent against the petitioner.

18. The second charge against the petitioner and other co-workers named in the chargesheet is that on 25.8.2009, the petitioner along-with his associates named in the chargesheet instigated all the workers of the factory including the workers of the contractor to go on strike as a result of which all the workers went on illegal strike and also manhandled some of the workers and threatened them with dire consequences as a result of which the Police had to be called. To prove the aforesaid charge, the respondent had examined RW-1 to RW-3 but except for their bald statements, no other evidence has been led by the respondent to prove the aforesaid charge against the petitioner. Neither any independent witness nor any factory worker has been examined by the respondent in order to prove the aforesaid charge against the petitioner. Moreover, no worker of the contractor has been produced in the witness box. Though, the charge against the petitioner is that due to the illegal strike, the police had to be called, however, no record from the Police Station has been produced before this Court. RW-1 has admitted in cross-examination that they had not made any complaint to the Police that the workers had stopped the ingress of the vehicles on 25.8.2009 into the factory. RW-1 also stated in cross-examination that a complaint was made to the Police, however, for the reasons best known to the respondent neither any witness from the Police station has been examined nor any record from the Police station has been produced. RW-1 has also tendered in evidence complaint dated 25.8.2009 Ex. R-5 allegedly written to the SHO Police Station Barotiwala for police protection, however, there is nothing on record as to what had happened thereafter and what action had been taken by the Police on the aforesaid complaint Ex. R-5. There is no evidence on record as to whether the Police had arrived at the factory and whether Police protection had been given on the complaint Ex. R-5. Similarly, RW-1 has tendered in evidence copy of complaint dated 25.8.2009 Ex. R-3 addressed to Labour Officer, Baddi regarding the illegal strike but no record from the office of Labour Officer Baddi has been produced before this Court. Therefore, in the absence of any record from the SHO Police Station Barotiwala and Labour Officer Baddi, no reliance can be placed upon the complaints Ex. R-3 & Ex. R-5. Hence, in the absence of any cogent and satisfactory evidence on record the aforesaid charge against the petitioner has also not been proved.

19. The next charge against the petitioner is that on 25.8.2009, the petitioner and other workers named in the chargesheet were suspended and on 26.8.2009 at 8.30 A.M. they refused to receive the suspension order and thereafter the copy of the same was pasted on the factory gate and

on 26.8.2009 all the suspended workers have stopped the workers from doing the work. Further charge against the petitioner is that on 27.8.2009, after the conclusion of the conciliation proceedings the petitioner and other suspended workers had threatened the officials of the company who had attended the conciliation proceedings for which a complaint was also made to the Police. They have also been charged that due to their instigation, the workers of both the shifts remained on illegal strike on 25.8.2009 and they continued their strike *w.e.f.* 26.8.2009 to 28.8.2009. To prove the aforesaid charges, the respondent has examined RW-1 to RW-3, however, no cogent and satisfactory evidence has been led by the respondent to prove the aforesaid charges leveled against the petitioner and other workers named in the chargesheet. RW-1 stated in cross-examination that the respondent had made the complaint Ex. R-8 to the Labour Officer, Baddi regarding the illegal strike and also to the Labour Commissioner *vide* letter Ex. R-6, however, the respondent has failed to prove that the letter Ex. R-6 was sent to the Labour Commissioner. RW-1 admitted in cross-examination that the letter Ex. R-6 might have been sent through registered post but the postal receipt *qua* the same was not annexed. Though, RW-1 has stated that the letter Ex. R-8 was sent to the Labour Officer by hand but admittedly there is no endorsement/receipt of Labour Officer on the letter Ex. R-8. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the letters Ex. R-6 and Ex. R-8 regarding the illegal strike were received by the Labour Officer and Labour Commissioner respectively. Similarly, no witness from the Police Station Barotiwala has been examined and no record of Police Station Barotiwala has been produced before this Court in order to prove the letter Ex. R-7 written to the SHO Police Station Barotiwala regarding the illegal strike of the workers. There is also nothing on record to show that what action has been taken by the Police Station Barotiwala upon the letter Ex. R-7. RW-1 also admitted in cross-examination that they have not made any complaint to the Police regarding the threat given by the workers after the conciliation proceedings on 27.8.2009. Furthermore, RW-1 to RW-3 admitted in their cross-examination that the management had not received any complaint from the contractor regarding the stopping of work by the petitioner and other suspended workers. RW-2 also admitted that the other workers have not made any complaint in writing that they had been stopped by the petitioner for doing the work and to go on strike. Similarly, there is no evidence on record to suggest that during the period of alleged strike there was no production in the factory. RW-1 admitted that the respondent had not annexed any record of “no production” in the factory on 21.8.2009 and from 25.8.2009 to 27.8.2009. Though, RW-1 to RW-3 stated in cross-examination that they had deducted the wages of the workers for the period of strike but admittedly no record has been produced by the respondent regarding the deduction of wages during the period of strike and no record has been produced regarding the fact that the goods have not been delivered to the dealers during the period of strike. Neither any independent witness nor any worker has been examined to prove the aforesaid charge against the petitioner and other workers named in the chargesheet. Even, the contractor was not produced in the witness box in order to prove that his workers were stopped from doing the work by the petitioner and other workers named in the chargesheet. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charges against the petitioner and other workers named in the chargesheet have not been proved. Hence, I have no hesitation in holding that the respondent has failed to prove that due to the instigation of the petitioner and other workers named in the chargesheet, the workers went on illegal strike from 25.8.2009 to 28.9.2009 and had threatened the officials of the company

20. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the respondent has failed to prove the misconduct against the petitioner as alleged in the chargesheet dated 5.9.2009 Ex. R-13 issued by the respondent. Hence, the dismissal of the services of the petitioner on the basis of the aforesaid chargesheet is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

21. Since, I have held under issues No.1 & 2 above that the dismissal of the services of the petitioner by the respondent *w.e.f.* 27.3.2010 on the basis of chargesheet dated 5.9.2009 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C. 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the dismissal of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his dismissal. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his dismissal. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back- wages. Accordingly, issue No.3 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Ref. No. 19 of 2011

Instituted on 13-6-2011

Decided on 8-5-2018

Rakesh Kumar s/o Shri Anant Ram, r/o Village Dawar, P.O Arkaho, Tehsil Sarkaghat,
District Mandi, H.P. ..Petitioner.

Vs.

M/s Biogenetic Drugs Pvt. Ltd., Village Jharmajri, Baddi, District Solan, H.P. through its
Managing Director. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri R.K. Khidtta, Advocate

For respondent : Shri Rajiv Sharma, Advocate

AWARD

The reference for adjudication, sent by the appropriate government, is as under :—

“Whether the dismissal of the services of Shri Rakesh Kumar s/o Shri Anant Ram, Operator, by the Managing Director, M/s Biogenetic Drugs Private Limited, Village Jharmazri, Baddi, District Solan, H.P. w.e.f. 27.3.2010 after serving charge sheet and after holding enquiry is legal and justified? If not, to what back wages, service benefits and relief the above named operator is entitled to from the concerned management?”

2. Briefly the case of the petitioner is that he was engaged by the respondent company w.e.f. 6.12.2005 and worked as such till 27.3.2010 continuously. His services had been terminated on 27.3.2010 without assigning any reason and without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). On 25.8.2009, the respondent company asked the petitioner and other workers to leave the factory and did not allow them to work in the factory and only the workmen employed through contractor had been allowed to work. On 26.8.2009, the petitioner along-with other workers came to the factory for work but the security officer stopped them to enter the factory and the gate of the factory was closed. The suspension order of the petitioner and other workers had already been pasted on the factory gate. On 26.8.2009, when the company had not allowed the petitioner and other workers to enter the factory, they made a joint complaint to the Labour Officer, Baddi upon which Labour Inspector came in the factory and made the inspection and summoned the respondent to his office for conciliation on 27.8.2009 on which date one official of the respondent handed over the letter of the company to the Labour Inspector. On 28.9.2009, on the intervention of the Labour Inspector all other workers except the suspended workers including petitioner were allowed by the respondent company to work. It is further asserted that on 5.9.2009, the petitioner received the joint chargesheet from the respondent which was replied by him and thereafter the enquiry was conducted which was not fair and on the report of enquiry officer, the petitioner was asked to file the comments to the show cause and after receiving the reply of the petitioner, his services had been terminated. The petitioner never

instigated any worker to go on strike and did not cause the loss to the company in any manner. The enquiry officer right from very beginning started favouring the respondent, who used to right down the things which favoured the company. The petitioner also gave in writing against the enquiry officer but the same was not accepted. The enquiry officer had not allowed the petitioner to lead his evidence. The enquiry officer had not conducted the enquiry in fair manner and had also not followed the principle of natural justice. The termination of the petitioner is illegal and violative of the provisions of the Industrial Disputes Act, 1947.

3. By filing reply, the respondent averred that on 21.8.2009, the petitioner along-with other workers stopped work at about 3.00 P.M. and had not allowed anyone to perform duty. On 25.8.2009, the petitioner along-with other leading workers entered the factory and went to different departments and instigated other workmen to stop their work and resort to strike and as such the petitioner along-with other leading workmen who committed grave misconducts were suspended from duty *vide* letter dated 25.8.2009. On 26.8.2009, the suspension order was given to the petitioner and seven other employees, who refused to accept the same and the same were sent through post and copies were affixed on the main gate of the factory. It is further stated that the petitioner along-with other workmen committed grave misconduct for which they were suspended from the duty and a joint chargesheet dated 5.9.2009 was issued to them and when the reply filed by the petitioner was not found satisfactory, the management decided to hold domestic enquiry in to the matter and constituted the enquiry jointly *vide* letter dated 14.9.2009. Shri Krishna Mohan Tripathi was appointed as an enquiry officer who conducted the enquiry. The enquiry officer was independent and impartial person who conducted the enquiry in fair and proper manner by following the principles of natural justice. The show cause notice was sent to the petitioner against proposed punishment of dismissal along-with the enquiry report and thereafter the petitioner was dismissed from the employment *vide* letter dated 27.3.2010. Since, all the charges leveled against the petitioner, stood proved, his services had been terminated.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent. *Vide* order dated 20.7.2013, this Court framed the following preliminary issues:

- (1) Whether the domestic enquiry conducted against the petitioner is unfair and violative of the principles of natural justice as alleged? ...OPP.

5. Thereafter, *vide* order dated 2.12.2015, this Court decided the preliminary issue in favour of the petitioner and against the respondent by holding as under:

“In view of my foregoing findings on preliminary issue, the enquiry conducted by the enquiry officer *vide* Ex. RW-1/B, is violative of principle of natural justice, hence, is hereby set aside and quashed.

6. Since, the preliminary issue was answered against the respondent, hence, on the basis of pleadings of the parties, the following issues were framed by this Court on 2.12.2015 and the respondent was afforded opportunity to lead evidence on merits in order to prove the alleged misconduct of the petitioner.

- (1) Whether the petitioner has committed the misconduct as alleged in the chargesheet dated 5.9.2009 issued by the respondent? ...OPR.
- (2) If issue No.1 is proved in affirmative, whether the dismissal of the petitioner is legal and justified? ...OPR.

(3) If issue No.1 is not proved in affirmative, then to what service benefits the petitioner is entitled to? ...*OPP*.

(4) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No.1	No.
Issue No. 2	No.
Issue No. 3	Entitled to reinstatement in service with seniority and continuity but without back wages.
Relief	Reference answered in favour of the petitioner and against the respondent per operative part of award.

REASONS FOR FINDINGS

Issues No. 1 & 2 :

9. Being interlinked and correlated both these issues are taken up together for discussion and decision.

10. In order to prove issue No.1, the respondent has examined four RWs. Shri Bal Mohan Sharma HR/Admn. Manager appeared into the witness box as RW-1 and tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence notice dated 10.8.2009 Ex. R-1, notice dated 21.8.2009 Ex. R-2, letter to Labour Officer Baddi, Ex. R-3, notice dated 25.8.2009 Ex. R-4, letter to SHO Ex. R-5, notice dated 28.8.2009 Ex. R-6, letter dated 27.8.2009 Ex. R-7, letter dated 28.8.2009 Ex. R-8, letter dated 29.8.2009 Ex. R-9, notice dated 21.2.2008 Ex. R-10, notice dated 22.2.2009 Ex. R-11, notice dated 23.2.2008 Ex. R-12, chargesheet dated 5.9.2009 Ex. R-13, settlement dated 3.3.2008 Ex. R-14 and letter dated 29.8.2016 to S.P. Baddi Ex. R-15. In cross-examination, he admitted that the petitioner was engaged as a helper and he worked continuously till the date of his termination. He further admitted that the demand notice was raised by the workers in the year, 2009 for increase in the wages. He denied that the workers had worked throughout the day on 21.8.2009. He admitted that on 24.8.2009, the respondent had ordered the increase in the wages of the workers. He denied that on 25.8.2009, all the workers were stopped by the respondent at the main gate of the factory. He further denied that the workers never went on strike in the month of August, 2009. He admitted that no show cause notice was issued to the petitioner prior to the issuance of suspension order dated 26.8.2009. He denied that the work and conduct of the petitioner remained always satisfactory. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that regular workers were stopped by the respondent and contractual workers were allowed to work in the month of August, 2009. He also denied that the petitioner had never instigated any worker to go on strike. He admitted that the labour inspector visited the factory on 28.8.2009 and all the workers except the chargesheeted workers including the petitioner were allowed to resumé the

duties. He denied that false charges have been leveled against the petitioner to remove him from the job illegally. He further denied that the petitioner had never indulged in any misconduct and illegal activity. He admitted that the petitioner had completed 240 days in preceding twelve months.

11. Shri Arun Thakur, HR Officer stepped into the witness box as RW-2 and tendered in evidence his affidavit Ex. RW-2/A wherein he also reiterated almost all the averment as made in the reply. In cross-examination, he denied that the petitioner along-with other chargesheeted workers were not addressing the workers on 21.8.2009 and have never raised any slogans in the factory premises against the management. He denied that the workers had raised a demand to increase their wages. He further denied that the workers never went on strike on 21 and 25 to 27.8.2009. He also denied that the petitioner and other chargesheeted workers have never instigated any worker to go on strike. He denied that the respondent had stopped the workers at the main gate of the factory from doing the work. He admitted that no chargesheet was issued to the petitioner nor any enquiry was held against him and no action was taken against him for the incident dated 21.2.2008. He denied that all the workers except the petitioner have been paid full salary for the month of August, 2009. He further denied that the Labour Inspector had visited the factory in the month of August, 2009 and found the management at fault. He admitted that the petitioner and other chargesheeted workers used to raise the demands of the workers before the management. He denied that the petitioner had never indulged in any misconduct and illegal activity.

12. RW-3 Shri Dalip Singh, Packing Manager also tendered in evidence his affidavit Ex. RW-3/A wherein he reiterated almost all the averments as made in the reply. In cross-examination, he stated similar facts as stated by RW-1 and RW-2 in their cross- examination.

13. Shri Surinder Singh Bisht, Labour Inspector, Baddi appeared into the witness box as RW-4 to depose that he has not brought the summoned record as there is no such record found in their office. He further stated that notice Ex. R-1 was signed by Shri Puran Chand Thakur, the then Labour Inspector, Baddi. In cross-examination, he admitted that a file is maintained in their office regarding the conciliation proceedings of any case. He further admitted that in the notice Ex. R-1, it has not been requested to their office to initiate conciliation proceedings.

14. On the other hand the petitioner examined Shri Harmeet Singh as PW-1, who deposed that he had worked as an operator with the respondent from the year, 2006 till the year, 2010. He further deposed that he was present in the factory on 21.8.2009 and the petitioner had never stopped him or any other worker from doing the duty and on 24.8.2009, he was also present in the factory and the petitioner had never misbehaved with any official on that day and had never used any foul language against any of the official. He also stated that the petitioner and other office bearers of the union used to espouse the cause of the workers before the management including the enhancement of bonus and the services of the petitioner were terminated as he along-with other office bearers of the union raised the demands of the workers. In cross- examination, he denied that on 10.8.2009, all the workers have gathered outside the canteen and stopped the work with the demand to raise their salary. He further denied that the petitioner along-with other workers namely Raghuvir, Vikram, Surjit Kumari, Surender Pal, Sandeep Kumar, Prithi Chand and Rakesh Kumar were leading and instructing the other workers to go on illegal strike. He also denied that on 21.8.2009 at about 3.00 P.M., the workers have stopped the work at the instance of the petitioner and aforesaid workers. He denied that on 23rd and 24th August, 2009, the workers slowed down the production. He further denied that the workers were not allowed to enter inside the factory by the petitioner and aforesaid workers from 25.8.2009 to 28.8.2009.

15. The petitioner himself appeared into the witness box as PW-2 and tendered in evidence his affidavit Ex. P-1. In cross-examination, he denied that on 21.2.2008, the workers went on the strike. He further denied that no notice of strike was given to the management. He also denied that

on 21.2.2008, he along-with other workers namely Raghubir, Surender Pal, Sandeep Kumar, Surjeet Kumari, Mohan Lal, Prithi Chand and Vikram instigated the other workers to go on strike. He denied that they had told the management if their wages were not increased then they will not allow to run the factory. He admitted that prior to 21.2.2008, they have raised a demand charter on which the Labour Inspector-cum-Conciliation Officer started the conciliation proceedings and the said proceedings were pending on 21.2.2008. He denied that on 21.2.2008 a chargesheet was issued to him and aforesaid workers and were suspended. He further denied that after the settlement Ex. R-14 they were taken back in service and the chargesheet was dropped. He also denied that he was on duty on 10.8.2009 and at about 1.30 P.M., he along-with the aforesaid workers instigated all the workers to stop the work. He denied that on 21.8.2009, at about 3.00 P.M. the workers have stopped the production on their instigation. He further denied that he along-with aforesaid workers were suspended on 26.8.2009. He admitted that on 27.8.2009, a meeting for conciliation was fixed in the O/o Labour Inspector at Baddi. He denied that the on 28.9.2008, the factory was closed due to the strike of the workers. He further denied that he was chargesheeted along-with other workers for instigating them to go on illegal strike and he was also a part of the same. He admitted that he was dismissed from service on the basis of chargesheet Ex. R-13. He denied that he is gainfully employed.

16. I have closely scrutinized the entire evidence on record and from the closer scrutiny thereof, it has become clear that the petitioner along-with other workers were issued joint chargesheet dated 5.9.2009 and since the explanation submitted by the petitioner was not found satisfactory by the respondent, a domestic enquiry was ordered to be conducted and accordingly Mr. K. M Tripathi, Advocate was appointed as an enquiry officer to enquire into the charges leveled against them in respect of joint chargesheet. After the conclusion of enquiry, the enquiry officer had submitted his report dated 5.2.2010, Ex. RW-1/B. On the receipt of the enquiry report by the enquiry officer and after the satisfaction of the respondent that the charges leveled against the petitioner and other co-workers stood proved in the enquiry, the respondent concurred with the findings of the enquiry officer, as such the copy of the enquiry report along-with show cause notice was issued to the petitioner and other co-workers to the proposed punishment of dismissal and thereafter the petitioner along-with his co-workers were dismissed from the employment of the respondent company *vide* letter dated 27.3.2010. However, *vide* order dated 2.12.2015, this Court had set aside and quashed the enquiry conducted by the enquiry officer being violative of principles of natural justice and the respondent was afforded opportunity to lead evidence on merits in order to prove the misconduct as alleged in the chargesheet dated 5.9.2009 against the petitioner. At this stage, it would be pertinent to reproduce the joint chargesheet dated 5.9.2009 Ex. R-13 issued against the petitioner and other workers namely Mohan Lal, Surender Pal, Rakesh Kumar, Vikram, Nirmal Kumar, Ram Chand, Ms. Surjit Kumari, Sandeep Kumar and Prithi Chand with respect to the alleged misconduct which is in Hindi and the same reads as under:

“आप पर आरोप है कि आप लोगों ने दिनांक 21-8-2009 को बिना सूचना एक साथ मिलकर तथा एक राय होकर लगभग 3 बजे अचानक काम रोक दिया और ठेकेदार के श्रमिकों को भी काम नहीं करने दिया जिसके लिए प्रबंधकों ने नोटिस भी जारी किया कि आप लोग “काम नहीं तो वेतन नहीं” के आधार पर उस अवधि के वेतन के अधिकारी नहीं हैं।

दिनांक 24-8-2009 को प्रबंधकों ने वेतन वृद्धि घोषित की जिसका घोषित पत्र नोटिस बोर्ड पर लगाया गया।

आप सभी दिनांक 25-8-2009 को सुबह फैक्ट्री के अंदर आये परन्तु अपने कार्य स्थल पर नहीं पहुंचे। आप लोगों ने कार्य स्थल छोड़कर अन्य विभागों में जाकर श्रमिकों को काम न करने के लिए उकसाया एवं भड़काया। आप लोगों ने अपना कार्य शुरू नहीं किया। आप लोगों के उकसाने एवं भड़काने से अन्य श्रमिकों ने आप लोगों की अगुवाई में, फैक्ट्री के अंदर रहकर बिना सूचना अनुचित एवं गैरकानूनी हड़ताल की।

प्रबंधकों के द्वारा आप लोगों को समझाया गया कि आप लोग श्रमिकों को अनुचित एवं गैरकानूनी हड़ताल के लिए न उकसायें और हड़ताल समाप्त कर काम पर वापस आये क्योंकि इससे उत्पादन का भी नुकसान हो रहा है। प्रतिष्ठान की आर्थिक हालत पहले से ही खराब है लेकिन आप लोगों ने प्रबंधकों का कहना नहीं माना और आप सभी ने न केवल कम्पनी के श्रमिकों को बल्कि ठेकेदार के श्रमिकों को भी काम नहीं करने दिया। दोपहर के बाद आप लोगों ने उन श्रमिकों के साथ हाथापाई की जो फैक्ट्री में बना हुआ तैयार माल डिलीवरी के लिए ले जा रहे थे और आप लोगों ने तैयार माल फैक्ट्री से बाहर नहीं जाने दिया तथा धमकी दी कि जो भी माल बाहर लेकर जायेगा उसके हाथ पैर तोड़ देंगे। शाम को अपनी पाली समाप्त होने के बाद आप सभी फैक्ट्री गेट के पास अंदर ही इकट्ठे हो गए और कहा कि आप लोग फैक्ट्री नहीं चलने देंगे। आप लोगों के उग्र एवं विध्वंसक रवैये को देखते हुए पुलिस बुलानी पड़ी। पुलिस के आने के बाद आप लोग फैक्ट्री से बाहर गये।

आप लोगों के द्वारा एक साथ मिलकर एवं एक राय होकर दिनांक 25-8-2009 को किये गए दुराचरणों के लिए प्रबंधकों ने आपको, अपने पत्र दिनांक 25-8-2009 द्वारा कार्य से निलंबित कर दिया। आप लोगों को निलंबन आदेश दिनांक 26-8-2009 को सुबह लगभग 8.30 बजे फैक्ट्री गेट पर दिया गया। लेकिन आप लोगों ने निलंबन आदेश पढ़ कर लेने से मना कर दिया तदोपरान्त निलंबन आदेशों को गेट पर लगा दिया गया। दिनांक 26-8-2009 को आप सभी निलंबित श्रमिकों ने गेट पर दूसरे श्रमिकों को भी रोक लिया तथा धमकाया कि जो काम पर जाएगा उसके हाथ पैर तोड़ दिए जाएंगे, जिसके कारण कुछ श्रमिक जो कार्य पर जाना चाहते थे वे भी आप लोगों की धमकियों की वजह से कार्य पर नहीं गए।

प्रबंधकों द्वारा समस्त हड़ताली श्रमिक को बार-बार समझाया गया परन्तु इसके बावजूद भी हड़ताली श्रमिक आप सभी के उकसाने व भड़काने पर हड़ताल समाप्त कर ड्यूटी पर उपस्थित नहीं हुए और वे इस बात पर अड़े रहे हैं कि जब तक निलंबित श्रमिकों का निलंबन वापस नहीं लिए जाता कोई भी ड्यूटी पर नहीं जाएगा और हड़ताल जारी रहेगी। आप लोगों तथा एक अन्य निलंबित श्रमिक श्री रघुवीर के साथ खुश और श्रमिक भी दुराचरणों में लिप्त हुए। आप लोगों ने उपरोक्त दिनांक में यह भी धमकी दी कि आप लोग कम्पनी नहीं चलने देंगे, जो भी काम पर जाएगा उन्हें मारेंगे-पीटेंगे और देखते हैं कि कैसे फैक्ट्री से बाहर निकलते हैं।

दिनांक 27-8-2009 को संराधन कार्यवाही के दौरान आप सभी निलंबित श्रमिकों ने संराधन कार्यवाही समाप्त होने के समय, कम्पनी के अधिकारी को जो संराधन कार्यवाही में हिस्सा लेने गए थे, धमकी दी कि उन्हें लेबर ऑफिस से बाहर नहीं जाने देंगे एवं उनकी गाड़ी भी तोड़ दी जायेगी। जिसकी सूचना पुलिस विभाग को भी दी गयी थी।

आप लोगों के उकसाने व भड़काने से दिनांक 25-8-2009 को दोनों पालियों के श्रमिक हड़ताल पर रहे और दिनांक 26-8-2009 से फैक्ट्री के बाहर रहकर अपनी अनुचित एवं गैरकानूनी हड़ताल दिनांक 28-8-2009 तक जारी रखी। आप सभी के उपरोक्त कार्य गंभीर दंडनीय दुराचरण हैं। आप को आदेश है कि आप इस आरोप पत्र की प्राप्ति के तीन दिन के अंदर उत्तर दें कि क्यों न आप के विरुद्ध अनुशासनात्मक कार्यवाही की जाए। अगर आप का उत्तर निर्धारित समय में प्राप्त नहीं हुआ तो यह समझा जाएगा कि आपको आरोप स्वीकार हैं तथा तदनुसार कार्यवाही की जायेगी।

मामले के अंतिम निपटारे तक आपका निलंबन आदेश प्रभावी रहेगा।”

17. Now, the question which arises for consideration before this Court is as to whether the respondent has been able to prove the misconduct allegedly committed by the petitioner as per the aforesaid chargesheet. The first charge against the petitioner is that on 21.8.2009, at about 3.00 P.M., the petitioner along-with the other co-workers named in the chargesheet stopped the workers of the factory including the workers of the contractor from doing the work for which the management had also issued the notice to the workers that they would not be entitled for the wages for the period during which they had not worked on the principle of “no work no wage”. However, to prove the aforesaid charge, except for the statements of RW-1, RW-2 and RW-3, no other cogent

and satisfactory evidence on record has been led by the respondent. Though, RW-1 has tendered in evidence notice dated 21.8.2009, Ex. R-2 but no reliance can be placed upon the same because a copy of the same has also been allegedly endorsed to the Labour Department but neither any record nor any witness from the Labour Department has been produced by the respondent in order to prove that this notice was also sent to the Labour Department. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. The petitioner has specifically denied in cross-examination that on 21.8.2009 at 3.00 P.M. the workers have stopped the work on their instigation. Neither any independent witness nor any worker of the factory or any worker of the contractor has been examined by the management to prove the aforesaid charge against the petitioner. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charge has not been proved by the respondent against the petitioner.

18. The second charge against the petitioner and other co-workers named in the chargesheet is that on 25.8.2009, the petitioner along-with his associates named in the chargesheet instigated all the workers of the factory including the workers of the contractor to go on strike as a result of which all the workers went on illegal strike and also manhandled some of the workers and threatened them with dire consequences as a result of which the Police had to be called. To prove the aforesaid charge, the respondent had examined RW-1 to RW-3 but except for their bald statements, no other evidence has been led by the respondent to prove the aforesaid charge against the petitioner. Neither any independent witness nor any factory worker has been examined by the respondent in order to prove the aforesaid charge against the petitioner. Moreover, no worker of the contractor has been produced in the witness box. Though, the charge against the petitioner is that due to the illegal strike, the police had to be called, however, no record from the Police Station has been produced before this Court. RW-1 has admitted in cross-examination that they had not made any complaint to the Police that the workers had stopped the ingress of the vehicles on 25.8.2009 into the factory. RW-1 also stated in cross-examination that a complaint was made to the Police, however, for the reasons best known to the respondent neither any witness from the Police station has been examined nor any record from the Police station has been produced. RW-1 has also tendered in evidence complaint dated 25.8.2009 Ex. R-5 allegedly written to the SHO Police Station Barotiwala for police protection, however, there is nothing on record as to what had happened thereafter and what action had been taken by the Police on the aforesaid complaint Ex. R-5. There is no evidence on record as to whether the Police had arrived at the factory and whether Police protection had been given on the complaint Ex. R-5. Similarly, RW-1 has tendered in evidence copy of complaint dated 25.8.2009 Ex. R-3 addressed to Labour Officer, Baddi regarding the illegal strike but no record from the office of Labour Officer Baddi has been produced before this Court. Therefore, in the absence of any record from the SHO Police Station Barotiwala and Labour Officer Baddi, no reliance can be placed upon the complaints Ex. R-3 & Ex. R-5. Hence, in the absence of any cogent and satisfactory evidence on record the aforesaid charge against the petitioner has also not been proved.

19. The next charge against the petitioner is that on 25.8.2009, the petitioner and other workers named in the chargesheet were suspended and on 26.8.2009 at 8.30 A.M. they refused to receive the suspension order and thereafter the copy of the same was pasted on the factory gate and on 26.8.2009 all the suspended workers have stopped the workers from doing the work. Further charge against the petitioner is that on 27.8.2009, after the conclusion of the conciliation proceedings the petitioner and other suspended workers had threatened the officials of the company who had attended the conciliation proceedings for which a complaint was also made to the Police. They have also been charged that due to their instigation, the workers of both the shifts remained on illegal strike on 25.8.2009 and they continued their strike *w.e.f.* 26.8.2009 to 28.8.2009. To prove the aforesaid charges, the respondent has examined RW-1 to RW-3, however, no cogent and satisfactory evidence has been led by the respondent to prove the aforesaid charges leveled against

the petitioner and other workers named in the chargesheet. RW-1 stated in cross-examination that the respondent had made the complaint Ex. R-8 to the Labour Officer, Baddi regarding the illegal strike and also to the Labour Commissioner *vide* letter Ex. R-6, however, the respondent has failed to prove that the letter Ex. R-6 was sent to the Labour Commissioner. RW-1 admitted in cross-examination that the letter Ex. R-6 might have been sent through registered post but the postal receipt qua the same was not annexed. Though, RW-1 has stated that the letter Ex. R-8 was sent to the Labour Officer by hand but admittedly there is no endorsement/receipt of Labour Officer on the letter Ex. R-8. Therefore, in the absence of any satisfactory evidence on record, it cannot be said that the letters Ex. R-6 and Ex. R-8 regarding the illegal strike were received by the Labour Officer and Labour Commissioner respectively. Similarly, no witness from the Police Station Barotiwala has been examined and no record of Police Station Barotiwala has been produced before this Court in order to prove the letter Ex. R-7 written to the SHO Police Station Barotiwala regarding the illegal strike of the workers. There is also nothing on record to show that what action has been taken by the Police Station Barotiwala upon the letter Ex. R-7. RW-1 also admitted in cross-examination that they have not made any complaint to the Police regarding the threat given by the workers after the conciliation proceedings on 27.8.2009. Furthermore, RW-1 to RW-3 admitted in their cross-examination that the management had not received any complaint from the contractor regarding the stopping of work by the petitioner and other suspended workers. RW-2 also admitted that the other workers have not made any complaint in writing that they had been stopped by the petitioner for doing the work and to go on strike. Similarly, there is no evidence on record to suggest that during the period of alleged strike there was no production in the factory. RW-1 admitted that the respondent had not annexed any record of "no production" in the factory on 21.8.2009 and from 25.8.2009 to 27.8.2009. Though, RW-1 to RW-3 stated in cross-examination that they had deducted the wages of the workers for the period of strike but admittedly no record has been produced by the respondent regarding the deduction of wages during the period of strike and no record has been produced regarding the fact that the goods have not been delivered to the dealers during the period of strike. Neither any independent witness nor any worker has been examined to prove the aforesaid charge against the petitioner and other workers named in the chargesheet. Even, the contractor was not produced in the witness box in order to prove that his workers were stopped from doing the work by the petitioner and other workers named in the chargesheet. RW-4, Labour Inspector, Baddi has specifically deposed that record pertaining to conciliation and strike at Biogenetic Drugs was not found in their office. Therefore, in the absence of any cogent and satisfactory evidence on record, the aforesaid charges against the petitioner and other workers named in the chargesheet have not been proved. Hence, I have no hesitation in holding that the respondent has failed to prove that due to the instigation of the petitioner and other workers named in the chargesheet, the workers went on illegal strike from 25.8.2009 to 28.9.2009 and had threatened the officials of the company

20. Therefore, in view of my foregoing discussion, I have no hesitation in holding that the respondent has failed to prove the misconduct against the petitioner as alleged in the chargesheet dated 5.9.2009 Ex. R-13 issued by the respondent. Hence, the dismissal of the services of the petitioner on the basis of the aforesaid chargesheet is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue No. 3 :

21. Since, I have held under issues no.1&2 above that the dismissal of the services of the petitioner by the respondent *w.e.f.* 27.3.2010 on the basis of chargesheet dated 5.9.2009 is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

22. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakaran t Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

23. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the dismissal of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

24. In the present case there is no satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his dismissal. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his dismissal. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.3 is partly decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my findings on the aforesaid issues, the claim of the petitioner succeeds and is hereby allowed with the result the petitioner is ordered to be reinstated in service with seniority and continuity but without back-wages. Consequently, the reference stands answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 8th Day of May, 2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-Labour Court, Shimla.

25.5.2018

Present:

None for the petitioner.

Shri Rajeev Kumar Sharma, Advocate for respondent.

As per the AD received back, the notice issued for the service of the petitioner through registered post has been duly served. Case called repeatedly but neither the petitioner nor any

Advocate authorized by him appeared before this Court despite the fact that as per acknowledgement the notice issued for the service of the petitioner had been duly served but despite that he had failed to appear before this Court which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:—

“Whether termination of services of Shri Devender Kumar s/o Shri Om Prakash C/o Shri Jagdish Chand, Village-Nanowal (Tapparian), P.O Kheda, Tehsil Nalagarh District Solan, HP *w.e.f.* 1.10.2016, by the Factory Manager M/s Krishna Thermopack, VPO Belideor, Tehsil Nalagarh, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, past service benefits, and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 1.10.2016 to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that *w.e.f.* 1.10.2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced: 25.5.2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla Camp at Nalagarh.

29.5.2018

Present: Shri Niranjana Verma, Advocate for petitioner
Shri Navesh Kumar, Advocate for respondent

Today, also claim not filed. At this stage it has been stated by Shri Niranjana Verma, Advocate for the petitioner that he does not want to proceed further with the present reference and wants to withdraw the same. To this effect, his statement recorded separately. Therefore, in view of the aforesaid statement of the learned counsel for the petitioner, the present reference is answered against the petitioner and in favour of respondent. The statement of the learned counsel for the petitioner which shall form part of this order/award. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced: 29.5.2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge, Labour Court, Shimla.

23.5.2018

Present: None.

As per the Track Consignment repost, the notice issued for the service of the petitioner has been duly served. It is 10:45 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called again

Present: None.

It is 12:55 PM. Case called again but neither the petitioner nor any Advocate on his behalf appeared before this Court. Be called after lunch.

Sd/-
*Presiding Judge,
Labour Court, Shimla.*

Case called after lunch

Present: None.

It is 3.30 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per Track Consignment report the notice issued for the service of the petitioner had been duly served but despite that he had failed to appear before this Court which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether termination of services of Shri Madan Lal s/o Raj Kumar Village Khumahra, P.O Kaba kalan, Tehsil Kasauli, District solan, HP by the Registrar, Maharishi Markandeshwar Medical College and Hospital Village Lado, P.O Sultanpur, Tehsil and District Solan, HP w.e.f. 12.2.2015 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

From the aforesaid reference, it is clear that the petitioner has alleged his termination *w.e.f.* 12.2.2015 to be illegal and unjustified but despite having been served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that *w.e.f.* 12.2.2015, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, in the absence of any material on record, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered

against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced: 23.5.2018.

Sd/-
(SUSHIL KUKREJA),
Presiding Judge, Labour Court, Shimla.

25.5.2018

Present: None for the petitioner.
Shri Rajeev Kumar Sharma, Advocate for respondent

As per the Track Consignment Report, the notice issued for the service of the petitioner through registered post has been duly served. Case called repeatedly but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per the Track Consignment Report the notice issued for the service of the petitioner had been duly served but despite that he had failed to appear before this Court which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

“Whether demand of Shri Vikas Pathania s/o Shri Kashmir Singh Village Makrari, P.O Jalphed, Tehsil Joginder Nagar, District Mandi, HP for reinstatement of his services and payment of salary from 14.4.2015 onwards, before the management of M/s Astral poly Technik Ltd., Village Bated, P.O Barotiwala, Tehsil Baddi, District Solan, 173205, HP, after receiving full & final amount of ₹ 97204/- from the above management is legal and justified? If yes, what relief the above aggrieved workman is entitled to from the said management and if not, its effect?”

From the aforesaid reference, it is clear that the petitioner has demanded for reinstatement of his services and payment of salary from 14.4.2015 onwards before the respondent but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that the aforesaid demand of the petitioner for his reinstatement in service and payment of salary from 14.4.2015 onwards is legal and justified especially when as per the reference he has received full & final payment of ₹ 97204/-. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
25.5.2018.

Sd/-
(SUSHIL KUKREJA),
*Presiding Judge, Labour Court, Shimla
Camp at Nalagarh.*

उद्योग विभाग (भौमिकीय शाखा) शिमला-171001

निविदा-एवं-नीलामी सूचना

दिनांक 11 अक्टूबर, 2018

उद्योग-भू(खनि-4)लघु-376/2014-6683-6691.—सर्व साधारण को सूचित किया जाता है कि विभाग द्वारा जिला कुल्लू में पड़ने वाली 09 लघु खनिज खानों/खड्डों से रेत, पत्थर व बजरी उठाने हेतु अधिक पारदर्शिता एवं प्रतिस्पर्धा के उद्देश्य से निविदाएं-एवं-नीलामी (Tender-cum-Auction) की प्रक्रिया अपनाई जा रही है। इस प्रक्रिया के प्रथम चरण में उक्त खानों/खड्डों की निविदाएं आमंत्रित की जा रही हैं, तदोपरान्त द्वितीय चरण में उक्त खानों/खड्डों की खुली नीलामी की जायेगी तथा इन दोनों प्रक्रिया में जो भी उच्चतम राशि बोलीदाता/निविदादाता द्वारा प्रस्तावित की जायेगी उसको खान/खड्ड का सफल बोलीदाता/निविदादाता घोषित किया जायेगा। निविदा दाता को यह अधिकार होगा कि वह खुली नीलामी में भी भाग ले सकता है तथा अपनी निविदा में दर्शाई गई राशि से अधिक राशि पर बोली दे सकता है।

निविदाएं खनि अधिकारी कुल्लू जिला कुल्लू, हिमाचल प्रदेश के कार्यालय में आमंत्रित की जा रही हैं। निविदा दिनांक 14-11-2018 को शाम 4.00 बजे तक खनि अधिकारी कुल्लू जिला कुल्लू, हिमाचल प्रदेश के कार्यालय में मोहर बन्द लिफाफों में खनि अधिकारी कार्यालय में रखी गई निविदा पेटी में डाली जाएं व उसकी प्रविष्टि (Entry) खनि अधिकारी द्वारा कार्यालय रजिस्टर में की जायेगी जिसकी पावती भी खनि अधिकारी द्वारा जारी की जायेगी। उक्त खानों/खड्डों की निविदाएं प्राप्त होने पर दिनांक 15-11-2018 को प्रातः 11.00 बजे उक्त खानों/खड्डों की खुली नीलामी कमेटी द्वारा जिला कुल्लू के बचत भवन में की जाएगी। जिसमें जिन व्यक्तियों ने निविदाएं दी हैं, के साथ-साथ अन्य कोई भी इच्छुक व्यक्ति सम्मिलित हो सकता है। इच्छुक व्यक्ति लघु खनिज खानों/खड्डों की जानकारी तथा निविदा व नीलामी की प्रक्रिया व शर्तों के लिए राज्य भू-विज्ञानी, हिमाचल प्रदेश, शिमला-1 अथवा खनि अधिकारी कुल्लू जिला कुल्लू के कार्यालय में किसी भी कार्य दिवस में आकर सम्पर्क स्थापित कर सकते हैं। इसके अतिरिक्त निविदा हेतु खानों/खड्डों की जानकारी विभागीय website emerginghimachal.hp.gov.in से भी प्राप्त की जा सकती है। नीलामी की प्रक्रिया सम्पन्न होने पर प्राप्त हुई निविदाएं उसी दिन खोली जायेंगी। उपरोक्त दोनों में से उच्चतम बोलीदाता द्वारा दी गई बोली की राशि अथवा उच्चतम निविदादाता द्वारा दी गई निविदा राशि, जो भी राशि अधिक होगी, उस सम्बन्धित बोलीदाता/निविदा दाता को कुल उच्चतम राशि का 25 प्रतिशत उसी समय जमा करवाना होगा जोकि जमानत ठेके की राशि के रूप में होगी।

कोई भी व्यक्ति जो निविदा देने अथवा नीलामी में भाग लेने का इच्छुक हो, उस व्यक्ति के पास निम्नलिखित दस्तावेजों का होना अनिवार्य है:—

1. पैनकार्ड ।
2. खनन सम्बन्धित बकाया न होने का शपथ पत्र।
3. निविदा दाता को उक्त दस्तावेज मुबलिंग 50000/- रुपये (पच्चास हजार रुपये) बैंक ड्राफ्ट के रूप में निविदा फार्म पूर्ण रूप में भरे हुये के साथ स्वयं या डाक द्वारा निर्धारित तिथि से पहले खनि अधिकारी कार्यालय कुल्लू में धरोहर राशि के लिए बैंक में जमा करवाने होंगे।
4. कोई भी व्यक्ति जो नीलामी देने का इच्छुक हो, उसको उक्त दस्तावेज एवं मुबलिंग 50,000/-रुपये धरोहर राशि, बैंक ड्राफ्ट के रूप में निर्धारित बोली से पहले सम्बन्धित खनि अधिकारी के समक्ष प्रस्तुत करने होंगे। नीलामी सभागार में निविदा दाता या बोलीदाता प्रवेश करने से पूर्व खनि अधिकारी कुल्लू से प्रवेश पत्र प्राप्त करेंगे। एक प्रवेश पत्र पर दो व्यक्तियों को सभागार में जाने की अनुमति होगी।
5. बैंक ड्राफ्ट सम्बन्धित खनि अधिकारी कुल्लू, हिमाचल प्रदेश के नाम देय होगा। बैंक ड्राफ्ट के पीछे बोली दाता/निविदा दाता का नाम, पता व पैन नम्बर लिखा होना चाहिए। असफल

बोलीदाता/निविदा दाता को जमा ड्राफ्ट, नीलामी पूर्ण होने के उपरान्त वापिस कर दिया जाएगा।

6. यदि 8 हैक्टेयर क्षेत्र से कम क्षेत्र की बोली देने वाला बोलीदाता हिमाचली है तो उसे हिमाचली **(Bonafide Certificate)** प्रस्तुत करना होगा।
7. निविदा राशि अथवा बोली प्रति वर्ष के आधार पर ली जायेगी।
8. निविदा फार्म पूर्ण रूप से भरा हो व उपरोक्त वर्णित दस्तावेज निविदा फार्म के साथ संलग्न होने चाहिए अन्यथा अधूरे निविदा फार्म स्वीकृत नहीं किए जायेंगे।
9. निविदा खोलने के दौरान आवेदक/प्रतिनिधि का कमेटी के समक्ष होना अनिवार्य होगा।
10. नीलामी में भाग लेने के इच्छुक व्यक्तियों से भी यह आशा की जाती है कि वह निविदा प्रक्रिया द्वारा ही नीलामी में भाग लें।

आवेदक निविदा के लिए निविदा फार्म राज्य भू विज्ञानी, हिमाचल प्रदेश, शिमला-1 अथवा खनि अधिकारी कुल्लू के कार्यालय से प्राप्त कर सकता है जिसका मूल्य 5,000/- रु0 प्रति फार्म होगा। आवेदक को पूर्ण रूप से भरे हुए निविदा फार्म मोहर बन्द लिफाफे में खनि अधिकारी, कुल्लू के कार्यालय में उक्त दर्शाई गई तिथि तक प्रस्तुत करना होगा। लिफाफे के ऊपर बड़े अक्षरों में निविदा फार्म व आवेदित खान का नाम लिखा होना आवश्यक है व लिफाफे के बाईं ओर आवेदक का नाम व पता भी स्पष्ट अक्षरों में लिखा होना चाहिए।

हस्ताक्षरित/—
निदेशक उद्योग,
हिमाचल प्रदेश।

DETAIL OF PROPOSED MINOR MINERAL QUARRIES OF DISTRICT KULLU FOR TENDER-CUM-AUCTION :

Sl. No.	Name of the Quarry	Khasra No.	Area In Bighas	Mauza/Mohal	Name of Mineral	Reserve Price (in Rupees)
1	2	3	4	5	6	7
1.	Beas River Part-C	Tukra No. I	09-11-00	Diyar	Sand, Stone & Bajri	2,00,000/-
2.	Beas River Part-D	Tukra No. 2	07-12-00	Diyar	Sand, Stone & Bajri	1,75,000/-
3.	Beas River Part-E	Tukra No. I	10-00-00	Rot-II	Sand	2,00,000/-
4.	Beas River Part -F	Tukra No. I	07-10-00	Rot-II	Sand, Stone & Bajri	1,75,000/-

5.	Beas River Part-G	Tukra No. I	06-10-00	Rot-II	Sand, Stone & Bajri	1,50,000/-
6.	Beas River Part-H	Tukra No. I	03-15-00	Hat	Sand	1,00,000/-
7.	Beas River Part-I	Tukra No. I	06-09-04	Bajaura	Sand	1,50,000/-
8.	Parvati River Part-A	Tukra No. I	08-04-00	Kashawari	Sand	1,80,000/-
9.	Parvati River Part-B	Tukra No. I	08-00-00	Kashawari	Sand	1,80,000/-

नोट:— (क्रम संख्या 3 व क्रम संख्या 6 से 9 तक रेत के लिए निविदा एवं नीलामी पर दी जाएगी) उक्त सभी खानें वन संरक्षण अधिनियम, 1980 के प्रावधानों को आकर्षित करती हैं तथा Forest Clearance लेना अनिवार्य है।

निविदा—एवं—नीलामी शर्तें:

1. विभाग द्वारा जिला कुल्लू में 09 खाली पड़ी लघु खनिज की खानों को हिमाचल प्रदेश गौण खनिज (रियायत) और खनिज (अवैध खनन उसके परिवहन और भण्डारण का निवारण) नियम, 2015 के अन्तर्गत खनन हेतु निविदा व खुली नीलामी द्वारा आबंटित किया जायेगा। खनन हेतु रायल्टी राशि के एवज में विभाग द्वारा प्रतिवर्ष के आधार पर निविदा/नीलामी राशि वसूल की जायेगी तथा निविदा/नीलामी उच्चतम निविदा/नीलामी देने वाले व्यक्ति के पक्ष में प्रदान की जायेगी।
2. निविदा/नीलामी राशि प्रतिवर्ष के आधार पर ली जाएगी तथा राशि उसी दर पर दो वर्ष तक वसूल की जाएगी, उसके उपरान्त ठेके की शेष अवधि के दौरान निविदा/नीलामी राशि के अतिरिक्त उक्त राशि पर प्रतिवर्ष 10 प्रतिशत बढ़ौतरी चक्रवृद्धि ब्याज की दर से अतिरिक्त राशि वसूल की जाएगी।
3. निविदा/नीलामी देने वाला व्यक्ति किसी भी जिला में खनन से सम्बंधित देय राशि का बकायादार नहीं होना चाहिए। यदि कोई निविदा/नीलामी देने वाला व्यक्ति विभाग के बकायादार होने का दोषी पाया जाता है तो उस व्यक्ति को निविदा/नीलामी प्रक्रिया में भाग लेने की अनुमति नहीं दी जायेगी। यदि कोई बकायादार व्यक्ति कोई खान निविदा/नीलामी पर ले लेता है, जिसका विभाग को बाद में ज्ञान होता है तो उस अवस्था में उस व्यक्ति द्वारा जमा राशि, बकाया राशि में समायोजित कर दी जाएगी तथा खान का ठेका रद्द करके खानों की पुनः नीलामी आमंत्रित की जाएगी।
4. सफल निविदा दाता/बोलीदाता एक वर्ष के लिए दी गई बोली राशि की 25 प्रतिशत राशि निविदा/नीलामी खुलने के समय प्रस्तुत करेगा जो कि जमानत राशि होगी। इसके अतिरिक्त निविदा/नीलामी राशि के आधार पर आयकर, पंचायत टैक्स, District Mineral Foundation Trust Fund व अन्य टैक्स/राशि समय-समय पर जो नियमानुसार देय है उच्चतम निविदा दाता/बोलीदाता को जमा करवाने होंगे। प्रथम वर्ष की निविदा/नीलामी राशि के 25 प्रतिशत के बराबर राशि उच्चतम निविदा दाता/बोलीदाता द्वारा Upfront Premium के रूप में जमा करवानी होगी जो कि देय त्रैमासिक किस्त में समायोजित की जाएगी। यह Upfront Premium राशि

- उच्चतम निविदा दाता/बोलीदाता द्वारा Letter of Intent जारी किए जाने की तिथि से एक महीने की अवधि के भीतर जमा करवानी होगी अन्यथा जमा करवाई गई जमानत राशि को जब्त करके खान को पुनः नीलाम किया जायेगा।
5. नीलामी के समय दी जाने वाली बोली यदि 10 लाख रुपये की सीमा से बढ़ जाती है तो उस अवस्था में बोलीदाताओं द्वारा अगली बोली 50 हजार रुपये प्रति बोली के आधार पर ही देनी होगी। इसके अतिरिक्त अगर यह सीमा 25 लाख रुपये से बढ़ जाती है तो उस अवस्था में अगली बोली एक लाख रुपये प्रति बोली के हिसाब से देनी होगी।
 6. बोली के दौरान यदि कमेटी को यह आभास होता है कि दी जाने वाली बोली पूलिंग (Pooling) आदि की वजह से संदेहास्पद है या आशानुरूप कम आ रही है तो उस अवस्था में कमेटी को उक्त किसी खान की नीलामी प्रक्रिया को निलम्बित करने का अधिकार होगा।
 7. यदि कोई निविदा दाता/बोलीदाता किसी लघु खनिज खान के खनिज अधिकारों की बोली देता है, परन्तु जमानत राशि निविदा/नीलामी प्रक्रिया सम्पन्न होने के समय जमा नहीं करवाता है या निविदा/नीलामी प्रक्रिया सम्पन्न होने के उपरान्त अनुपस्थित हो जाये, उस स्थिति में उस द्वारा जमा की गई अग्रिम धरोहर राशि जब्त कर ली जायेगी और भविष्य में कम से कम 5 वर्ष के लिए प्रदेश में किसी भी स्थान पर ऐसा व्यक्ति निविदा/नीलामी में हिस्सा नहीं ले सकेगा तथा उक्त खानों/खड्डों की पुनः निविदा/नीलामी आमंत्रित की जायेगी।
 8. जिन खानों/खड्डों के खनिज अधिकारों को निविदा/नीलामी हेतु अधिसूचित किया गया है उनके खसरा नं०/राजस्व रिकार्ड या फिर भौगोलिक सीमा/स्थाई चिन्हों की जानकारी, इच्छुक व्यक्ति सम्बंधित खनि अधिकारी से प्राप्त कर सकता है व क्षेत्र का निरीक्षण भी अपने स्तर पर कर सकता है, ताकि क्षेत्र के बारे में पूर्ण जानकारी प्राप्त कर सके। निविदा/नीलामी केवल उसी क्षेत्र की होगी, जो कि अधिसूचना में प्रस्तावित किए गए हैं जिसका पूर्ण विवरण सम्बंधित खनि अधिकारी के कार्यालय से प्राप्त किया जा सकता है। इस बारे में, बाद में कोई भी आपत्ति स्वीकार्य नहीं होगी।
 9. 08 हैक्टेयर तक के क्षेत्र हिमाचल निवासियों के लिए आरक्षित होंगे ताकि स्थानीय लोगों को रोजगार सुनिश्चित किया जा सके। उक्त लाभ प्राप्त करने के लिए निविदादाता/बोलीदाता को निविदा/नीलामी से पूर्व खनन अधिकारी के समक्ष, अपना हिमाचली निवासी होने का प्रमाण पत्र (Bonafide Certificate) जो कि सक्षम अधिकारी द्वारा जारी किया गया हो प्रस्तुत करना अनिवार्य है। यदि 8 हैक्टर व उससे कम क्षेत्र वाली खड्डों हेतु कोई भी हिमाचली निविदादाता/बोलीदाता बोली नहीं देता है तो उस अवस्था में कोई भी गैर हिमाचली उक्त खड्डों की बोली दे सकता है।
 10. अगर पीठासीन अधिकारी को लगे कि निविदा/नीलामी द्वारा प्राप्त राशि किसी खान की अपेक्षित राशि के अनुरूप कम है तो उस स्थिति में समिति निविदा/नीलामी द्वारा खान को आबंटित न करने के लिए सिफारिश कर सकती है। खानों के न्यूनतम आरक्षित मूल्य खनि अधिकारी कार्यालय में उपलब्ध हैं।
 11. खनिजों के दोहन हेतु पर्यावरण प्रभाव आकलन (EIA Clearance) तथा वन संरक्षण अधिनियम 1980 के अन्तर्गत (अगर अनिवार्य हो तो) स्वीकृतियां ठेकेदार/सफल निविदा दाता/बोलीदाता द्वारा अपने स्तर पर व अपने खर्च व जोखिम पर सक्षम Authority is Letter of Intent जारी होने की तिथि से दो वर्ष के भीतर प्राप्त करनी होंगी। यदि उच्चतम बोलीदाता इस अवधि में Environment Clearance या वन संरक्षण अधिनियम, 1980 के अन्तर्गत स्वीकृति प्राप्त करने में असमर्थ रहता है तो उस स्थिति में उच्चतम निविदादाता/बोलीदाता द्वारा Environment Clearance व अन्य स्वीकृतियां प्राप्त करने बारे की गई प्रगति की समीक्षा करने के उपरान्त Letter of Intent की अवधि को आगामी एक वर्ष तक समय बढ़ौतरी बारे निदेशक उद्योग द्वारा

- निर्णय लिया जायेगा तथा इस बढ़ाये हुए एक वर्ष की अवधि तक भी अगर उच्चतम निविदादाता/बोलीदाता यह स्वीकृतियां प्राप्त नहीं करता है तो Letter of Intent की अवधि के आगामी समय बढ़ौतरी बारे केवल सरकार द्वारा ही निर्णय लिया जायेगा। तदोपरान्त यदि सफल उच्चतम निविदादाता/बोलीदाता Environment Clearance व अन्य स्वीकृतियां प्राप्त करने में असमर्थ रहता है तो उस अवस्था में Letter of Intent रद्द करके उसके द्वारा दी गई जमानत राशि व अन्य जमा करवाई गई राशियां जब्त कर ली जायेगी। EIA प्राप्त करने के उपरान्त ही सफल उच्चतम निविदा दाता/बोलीदाता को जिस क्षेत्र के लिए उसने निविदा/नीलामी दी थी उस क्षेत्र में खनन कार्य करने की अनुमति प्रदान की जाएगी। Environment Clearance व वन संरक्षण अधिनियम, 1980 के अन्तर्गत की गई प्रगति के बारे में ठेकेदार समय-समय पर विभाग को अवगत करवायेगा।
12. रेत, पत्थर व बजरी आदि की लघु खनिज खानों की अधिकतम अवधि 10 वर्ष सरकारी भूमि के लिए व वन विभाग से सम्बन्धित 15 वर्ष होगी तथा उच्चतम निविदादाता/बोलीदाता को खान में कार्य करने से पूर्व अपने स्तर पर पर्यावरण एवं वन मन्त्रालय भारत सरकार से खान क्षेत्र का पर्यावरण प्रभाव आकलन स्वीकृति (EIA Clearance) व वन संरक्षण अधिनियम, 1980 के अन्तर्गत स्वीकृति (अगर अनिवार्य हो तो) व Registered Qualified Person से Mining Plan बनवाना अनिवार्य है। उच्चतम निविदा दाता/बोलीदाता के पक्ष में सक्षम अधिकारी द्वारा सरकार से स्वीकृति के पश्चात निविदा/नीलामी खुलने के एक महीने के उपरान्त Letter of Intent जारी किया जाएगा ताकि उच्चतम बोलीदाता खान क्षेत्र का पर्यावरण प्रभाव आकलन स्वीकृति सक्षम Authority से तय सीमा जो कि 2 वर्ष की है के भीतर प्राप्त कर सकें। Letter of Intent में दर्शाई गई शर्तों की अनुपालना के उपरान्त उच्चतम निविदा दाता/बोलीदाता के पक्ष में नियमानुसार स्वीकृति आदेश जारी किए जाएंगे ताकि शर्तनामा निष्पादन किया जा सके। शर्तनामा निष्पादन करने से पूर्व सभी औपचारिकताएं पूर्ण करने पर सफल उच्चतम निविदा दाता/बोलीदाता द्वारा सम्बन्धित कर आदि के रूप में राशि खनि अधिकारी के कार्यालय में जमा करवाना अनिवार्य होगा व शेष वर्षों में भी 25 प्रतिशत त्रैमासिक किश्त के आधार पर बकाया राशि समय-समय पर खनि अधिकारी के कार्यालय में शर्त नं०-2 के अनुसार अग्रिम रूप से जमा करवानी होगी।
 13. निविदा/नीलामी केवल उसी अवस्था में स्वीकार होगी, यदि निविदा/नीलामी किसी सक्षम अधिकारी द्वारा अनुमोदित की गई हो।
 14. शर्तनामा निष्पादन करने के उपरान्त उच्चतम निविदा दाता/बोलीदाता, निविदा/नीलामी में लिए गये क्षेत्र से प्रत्येक पांच वर्ष के लिए अनुमोदित Mining Plan के अनुरूप कार्य करेगा। Mining Plan में आंकलित खनिज से अधिक मात्रा में खनिज निकालने पर ठेका रद्द किया जा सकता है। पांच वर्ष पूर्ण होने के उपरान्त ठेकेदार को Mining Plan फिर से अनुमोदित करवाना होगा जिसके लिए वह नियमानुसार Mining Plan की अवधि के समाप्त होने से कम से कम 120 दिन पूर्व नवीकरण के लिए आवेदन करेगा।
 15. नीलामी कमेटी को अधिकार है कि वे नीलामी के समय किन्हीं विशेष परिस्थितियों को ध्यान में रखते हुए अलग से शर्तें लगा सकते हैं जो कि सभी इच्छुक व्यक्तियों को मान्य होगी। इसके अतिरिक्त खनन सम्बन्धी जो दिशा निर्देश सरकार द्वारा समय-समय पर जारी किए जायेंगे वे भी सभी को मान्य होंगे। नीलामी कमेटी को यह अधिकार है कि वह किसी भी निविदा/नीलामी क्षेत्र को बिना कारण बताए अस्वीकार कर सकती है। निविदा/नीलामी के दौरान यदि कोई बोलीदाता दुर्यवहार करता है तो पीठासीन अधिकारी को यह अधिकार होगा कि वह उस द्वारा जमा की गई अग्रिम धरोहर राशि जब्त करते हुये उसे निविदा/नीलामी में हिस्सा लेने के लिए अयोग्य घोषित कर सकता है तथा इस बारे में पीठासीन अधिकारी द्वारा विस्तृत रिपोर्ट सरकार को प्रेषित की जायेगी।

16. निविदा/नीलामी पर लिए गये क्षेत्र से उठाए गये खनिज को किसी स्थापित स्टोन क्रशर में उपयोग करने हेतु अनुमति नहीं होगी परन्तु यदि कोई निविदा दाता/बोलीदाता, निविदा/नीलामी पर लिए गये खनिजों को अपने पहले से ही स्थापित स्टोन क्रशर में उपयोग में लाना चाहता है या नया स्टोन क्रशर स्थापित करना चाहता है तो उक्त क्रशर स्थल की दूरी निविदा/नीलामी में लिए गये क्षेत्र से नियमों के अन्तर्गत दर्शाई गई दूरी के अनुसार होनी चाहिए परन्तु इस स्थिति में उसे बोल्टर की खुली बिक्री करने की अनुमति नहीं होगी। नया स्टोन क्रशर लगाने हेतु सरकार द्वारा जारी किए गये नियमों/अधिसूचनाओं के अन्तर्गत अनुमति प्राप्त करनी अनिवार्य होगी। इसके अतिरिक्त किसी खान के लिए यदि निविदादाता/बोलीदाता एक से अधिक व्यक्ति हों तो उस स्थिति में उच्चतम निविदा दाता/बोलीदाता को नीलामी क्षेत्र से उठाए गए खनिजों को अपने पक्ष में पहले से स्थापित केवल एक ही स्टोन क्रशर में प्रयोग करने की अनुमति होगी। लेकिन यदि निविदा-एवं-नीलामी पर दिए जाने वाली लघु खनिज खान का क्षेत्र 2 हेक्टेयर से कम हो तो ऐसी अवस्था में उक्त खान (2 Hects. से कम क्षेत्र) के आधार पर, नया स्टोन क्रशर स्थापित करने की अनुमति नहीं होगी।
17. जनहित में यदि आवश्यक हो तो किसी भी निविदा/नीलामी में ली गई खान के भाग को कम किया जा सकता है या खान को पूर्ण रूप से भी बन्द किया जा सकता है। क्षेत्र कम करने की अवस्था में ठेका राशि भी उसी अनुपात में कम की जाएगी।
18. खनन हेतु मशीन उपकरण Mechanical/Hydraulic Excavator/जैसे जे0सीबी0 इत्यादि के प्रयोग की स्वीकृति हि0 प्र0 गौण खनिज (रियायत) और खनिज (अवैध खनन उसके परिवहन और भण्डारण का निवारण) नियम, 2015 व समय-समय पर संशोधित उक्त नियमों के प्रावधानों के अन्तर्गत व एवं Environment Clearance में दर्शाई गई शर्तों के अनुरूप ही दी जाएगी तथा सक्षम अधिकारी से स्थल निरीक्षण के उपरान्त इस बारे स्वीकृति लेना आवश्यक है।
19. खान/नदी/खड्ड में पहुंचने के लिए मार्ग बनाने व प्रयोग करने हेतु ठेकेदार सम्बन्धित पक्षों/विभागों से अनुमति अपने स्तर पर प्राप्त करेगा। खान तक पहुंचने के मार्ग के लिए विभाग की कोई जिम्मेवारी नहीं होगी।
20. नीलामी के लिए प्रस्तावित क्षेत्र में यदि कोई निजी भूमि पड़ती है या किसी अन्य व्यक्ति/व्यक्तियों के भू-स्वामित्व अधिकार हों तो इस अवस्था में ठेकेदार सम्बन्धित भू-स्वामियों से अपने स्तर पर अनुमति प्राप्त करेगा व इस सम्बन्ध में विभाग की कोई जिम्मेवारी नहीं होगी।
21. बोल्टर व हाथ से तोड़ी गई रोड़ी को राज्य की सीमा से बाहर ले जाने की अनुमति नहीं होगी।
22. अवैध खनन को रोकने हेतु लघु खनिजों का परिवहन रात आठ बजे से प्रातः छः बजे तक प्रतिबन्धित रहेगा।
23. ठेकाधारी को सुनिश्चित करना होगा कि उसके द्वारा लगाए गये मजदूर नदी/खड्ड में मछलियों का शिकार न करें।
24. खनन कार्य नदी के धरातल से एक मीटर से अधिक गहराई में नहीं किया जाएगा।
25. खनिजों के एकत्रीकरण से भू-स्वामित्वों के निहित अधिकारों में कोई भी हस्तक्षेप नहीं होना चाहिए।
26. यदि वर्णित शर्तों की अवहेलना होती है या साथ लगते वन क्षेत्र को किसी भी प्रकार की क्षति विभाग के ध्यान में लाई जाती है, तो इस बारे नियमानुसार कार्यवाही अमल में लाई जायेगी।
27. ठेकेदार ठेके पर स्वीकृत क्षेत्र से निकाले गये खनिजों की मात्रा का मासिक ब्योरा विभाग को देगा।

28. खनन कार्य हि0 प्र0 गौण खनिज (रियायत) और खनिज (अवैध खनन उसके परिवहन और भण्डारण का निवारण) नियम 2015 व समय-समय पर संशोधित उक्त नियमों के प्रावधानों, सरकार द्वारा अधिसूचित हिमाचल प्रदेश खनिज नीति, पर्यावरण प्रभाव आकलन/वन संरक्षण अधिनियम 1980 के अन्तर्गत स्वीकृति की शर्तों के अनुसार, विभाग द्वारा समय-समय पर जारी निर्देशों, माननीय न्यायालयों के आदेशों के अनुरूप किया जाएगा। उपरोक्त नियमों/अधिसूचना/आदेशों की प्रति खनि अधिकारी कार्यालय से प्राप्त की जा सकती है।
29. ठेके की स्वीकृति व खनन कार्य माननीय सर्वोच्च न्यायालय में लम्बित **SLP (C) No. 13393 of 2008** जो कि माननीय उच्च न्यायालय में हिमाचल प्रदेश द्वारा याचिका संख्या **CWP No. 1077 of 2006** खतरी राम व अन्य के मामले में पारित निर्णय के विरुद्ध दायर की गई है के अन्तिम निर्णय के अनुरूप ही मान्य होगा। इसके अतिरिक्त किसी अन्य न्यायालय द्वारा समय-समय पर इस बारे पारित आदेश भी मान्य होंगे।
30. ठेकेदार या उसका कोई भी कर्मचारी निविदा/नीलामी में लिए गये क्षेत्र की आड़ में यदि कहीं अवैध खनन में संलिप्त पाया जाता है तो उसके विरुद्ध हि0 प्र0 गौण खनिज (रियायत) और खनिज (अवैध खनन उसके परिवहन और भण्डारण का निवारण) नियम 2015 व समय-समय पर संशोधित के प्रावधानों के अनुसार कार्यवाही अमल में लाई जायेगी। यदि ठेकेदार या उसका कोई भी कर्मचारी या वाहन अगर बार-बार अवैध खनन व बिना “W” फार्म से ढुलान में सम्मिलित पाया जाता है तो सरकार उसका ठेका रद्द भी कर सकती है।
31. ठेकाधारी सरकार को तृतीय पक्ष की क्षतिपूर्ति के लिए जिम्मेदार नहीं ठहराएगा। अतः वह स्वयं जिम्मेदार होगा।
32. सरकार को अधिकार है कि वे उच्चतम बोली को बिना किसी कारण बताये अस्वीकार कर सकती है।
33. सरकार को अधिकार है कि उपरोक्त मद संख्या 1-32 में दर्शायी गई शर्तों, के अतिरिक्त अन्य शर्तें ठेका शर्तनामा निष्पादन के दौरान लगा सकती है।
34. सरकार को अधिकार है कि उपरोक्त मद संख्या 1-32 में दर्शायी गई शर्तों, तथ्यों व नियमों की अवहेलना की अवस्था में ठेका रद्द भी किया जा सकता है तथा इस स्थिति में ठेकेदार द्वारा जमा राशि, जमानत राशि, Upfront Premium व त्रैमासिक किस्त आदि समस्त राशि जब्त कर ली जाएगी।

उद्योग विभाग (भौमिकीय शाखा) शिमला-171001

निविदा-एवं-नीलामी सूचना

दिनांक 10 अक्टूबर, 2018

उद्योग-भू(खनि-4)लघु-515/98-6630-6648.—सर्व साधारण को सूचित किया जाता है कि विभाग द्वारा जिला मण्डी में पड़ने वाली 16 लघु खनिज खानों/खड्डों से रेत, पत्थर व बजरी उठाने हेतु अधिक पारदर्शिता एवं प्रतिस्पर्धा के उद्देश्य से निविदाएं-एवं-नीलामी (**Tender-cum-Auction**) की प्रक्रिया अपनाई जा रही है। इस प्रक्रिया के प्रथम चरण में उक्त खानों/खड्डों की निविदाएं आमन्त्रित की जा रही है, तदोपरान्त द्वितीय चरण में उक्त खानों/खड्डों की खुली नीलामी की जायेगी तथा इन दोनों प्रक्रिया में जो भी उच्चतम राशि बोलीदाता/निविदा दाता द्वारा प्रस्तावित की जायेगी उसको खान/खड्ड का सफल

बोलीदाता/निविदा दाता घोषित किया जायेगा। निविदा दाता को यह अधिकार होगा कि वह खुली नीलामी में भी भाग ले सकता है तथा अपनी निविदा में दर्शाई गई राशि से अधिक राशि पर बोली दे सकता है।

निविदाएं खनि अधिकारी मण्डी, जिला मण्डी, हिमाचल प्रदेश के कार्यालय में आमंत्रित की जा रही है। निविदा दिनांक 12-11-2018 को शाम 4:00 बजे तक खनि अधिकारी मण्डी, जिला मण्डी, हिमाचल प्रदेश के कार्यालय में मोहर बन्द लिफाफों में खनि अधिकारी कार्यालय में रखी गई निविदा पेटी में डाली जाएं व उसकी प्रविष्टि (**Entry**) खनि अधिकारी द्वारा कार्यालय रजिस्टर में की जायेगी जिसकी पावती भी खनि अधिकारी द्वारा जारी की जायेगी। उक्त खानों/खड्डों की निविदाएं प्राप्त होने पर दिनांक 13-11-2018 को प्रातः 10.00 बजे उक्त खानों/खड्डों की खुली नीलामी कमेटी द्वारा रेशम अधिकारी मण्डी, जिला मण्डी के सभा भवन में की जाएगी। जिसमें जिन व्यक्तियों ने निविदाएं दी हैं, के साथ-साथ अन्य कोई भी इच्छुक व्यक्ति सम्मिलित हो सकता है। इच्छुक व्यक्ति लघु खनिज खानों/खड्डों की जानकारी तथा निविदा व नीलामी की प्रक्रिया व शर्तों के लिए राज्य भू-विज्ञानी, हिमाचल प्रदेश, शिमला-1 अथवा खनि अधिकारी, मण्डी जिला मण्डी के कार्यालय में किसी भी कार्य दिवस में आकर सम्पर्क स्थापित कर सकते हैं। इसके अतिरिक्त निविदा व नीलामी हेतु खानों/खड्डों की जानकारी विभागीय **web site himachal.nic.in/industry** से भी प्राप्त की जा सकती है। नीलामी की प्रक्रिया सम्पन्न होने पर प्राप्त हुई निविदाएं उसी दिन खोली जायेंगी। उपरोक्त दोनों में से उच्चतम बोलीदाता द्वारा दी गई बोली की राशि अथवा उच्चतम निविदा दाता द्वारा दी गई निविदा राशि, जो भी राशि अधिक होगी, उस सम्बन्धित बोलीदाता/निविदा दाता को कुल उच्चतम राशि का 25 प्रतिशत उसी समय जमा करवाना होगा जोकि जमानत ठेके की राशि के रूप में होगी।

कोई भी व्यक्ति जो निविदा देने अथवा नीलामी में भाग लेने का इच्छुक हो, उस व्यक्ति के पास निम्नलिखित दस्तावेजों का होना अनिवार्य है:—

1. पैनकार्ड ।
2. खनन सम्बन्धित बकाया न होने का शपथ पत्र। (**No Mining Dues**)
3. निविदा दाता को उक्त दस्तावेज मुबलिय 50000/- रुपये (पच्चास हजार रुपये) बैंक ड्राफ्ट के रूप में निविदा फार्म पूर्ण रूप में भरे हुये के साथ स्वयं या डाक द्वारा निर्धारित तिथि से पहले खनि अधिकारी कार्यालय मण्डी में धरोहर राशि के लिए बैंक में जमा करवाने होंगे।
4. कोई भी व्यक्ति जो नीलामी देने का इच्छुक हो, उसको उक्त दस्तावेज एवं मुबलिय 50,000/-रुपये धरोहर राशि, बैंक ड्राफ्ट के रूप में निर्धारित बोली से पहले सम्बन्धित खनि अधिकारी के समक्ष प्रस्तुत करने होंगे। नीलामी सभागार में निविदा दाता या बोलीदाता प्रवेश करने से पूर्व खनि अधिकारी, मण्डी से प्रवेश पत्र प्राप्त करेंगे। एक प्रवेश पत्र पर दो व्यक्तियों को सभागार में जाने की अनुमति होगी।
5. बैंक ड्राफ्ट सम्बन्धित खनि अधिकारी, मण्डी हिमाचल प्रदेश के नाम देय होगा। बैंक ड्राफ्ट के पीछे बोली दाता/निविदा दाता का नाम, पता व पैन नम्बर लिखा होना चाहिए। असफल बोलीदाता/निविदा दाता को जमा ड्राफ्ट, नीलामी पूर्ण होने के उपरान्त वापिस कर दिया जाएगा।
6. निविदा राशि अथवा बोली प्रति वर्ष के आधार पर ली जायेगी ।
7. निविदा फार्म पूर्ण रूप से भरा हो व उपरोक्त वर्णित दस्तावेज निविदा फार्म के साथ संलग्न होने चाहिए अन्यथा अधूरे निविदा फार्म स्वीकृत नहीं किए जायेंगे।
8. निविदा खोलने के दौरान आवेदक/प्रतिनिधि का कमेटी के समक्ष होना अनिवार्य होगा।
9. नीलामी में भाग लेने के इच्छुक व्यक्तियों से भी यह आशा की जाती है कि वह निविदा प्रक्रिया द्वारा ही नीलामी में भाग लें।

आवेदक निविदा के लिए निविदा फार्म राज्य भू विज्ञानी, हिमाचल प्रदेश शिमला-1 अथवा खनि अधिकारी मण्डी के कार्यालय से प्राप्त कर सकता है जिसका मूल्य 5,000/-रु० प्रति फार्म होगा। आवेदक को पूर्ण रूप से भरे हुए निविदा फार्म मोहर बन्द लिफाफे में खनि अधिकारी, मण्डी के कार्यालय में उक्त दर्शाई गई तिथि तक प्रस्तुत करना होगा। लिफाफे के ऊपर बड़े अक्षरों में निविदा फार्म व आवेदित खान का नाम लिखा होना आवश्यक है व लिफाफे के बाईं ओर आवेदक का नाम व पता भी स्पष्ट अक्षरों में लिखा होना चाहिए।

हस्ताक्षरित/—
निदेशक उद्योग,
हिमाचल प्रदेश।

DETAIL OF QUARRIES OF DISTRICT MANDI PROPOSED FOR TENDER-CUM-AUCTION

Sl. No.	Name of Minor Mineral Quarry River/ Khad Bed	Khasra No.	Area in Bighas	Mauza/ Mohal	Name of Mineral	Reserve Price (Amount in Rupees)
1	2	3	4	5	6	7
JAROT & DHANGU AREA OF SUKETI KHAD						
1.	Suketi Khad Part-IX	843/1	24-07-06 Bighas	Jajrot	Sand, Stone & Bajri	3,00,000/- (3 Lakhs)
2.	Suketi Khad Part - X	466/1	07-09-17 Bighas	Soyara	Sand, Stone & Bajri	1,00,000/- (1 Lakh)
3.	Suketi Khad Part-XI	466/2	27-00-11 Bighas	Soyara	Sand, Stone & Bajri	3,50,000/- (3.50 Lakhs)
4.	Suketi Khad Part-XII	427	15-02-06 Bighas	Ner	Sand, Stone & Bajri	1,50,000/- (1.50 Lakhs)
5.	Suketi Khad Part-XIII	491	28-00-07 Bighas	Dhangu	Sand, Stone & Bajri	3,75,000/- (3.75 Lakhs)
PANDOY AREA						
6.	Beas River Part-I	230/1	20-11-19 Bighas	Shambal	Sand, Stone & Bajri	4,00,000/- (4 Lakhs)

7.	Beas River Part-II	1/1	20-15-16 Bighas	Shambal	Sand, Stone & Bajri	4,00,000/- (4 Lakhs)
8.	Beas River Part-III	1069	18-04-09 Bighas	Pandoh	Sand, Stone & Bajri	3,60,000/- (3.60 Lakhs)
9.	Beas River Part-IV	1070	29-02-03 Bighas	Pandoh	Sand, Stone & Bajri	5,80,000/- (5.80Lakhs)
10	Beas River Part-V	390	11-07-18 Bighas	Shambal, Tehsil Sadar	Sand, Stone & Bajri	1,00,000/- (1 Lakh)
HANOGI AREA						
11.	Beas River Part-VI	208/1	07-14-02 Bighas	Hanogi, Tehsil Aut	Sand, Stone & Bajri	70,000/-
12.	Beas River Part-VII	208/2	05-01-08 Bighas	Hanogi, Tehsil Aut	Sand, Stone & Bajri	50,000/-
CHULLA-KHADAR TEHSIL LADBHAROL AREA						
13.	Chulla Part-I	1/1/1	98-02-17 Bighas	Chulla	Sand, Stone & Bajri	9,00,000/-
14.	Chulla Part-II	1/1/2	126-14-00 Bighas	Chulla	Sand, Stone & Bajri	10,00,000/- (10 Lakhs)
SUB DIVISION KARSOG AREA						
15.	Satluj Part-I	573/350/ 1	10-18-08 Bighas	Firnoo/ 599	Sand, Stone & Bajri	1,50,000/- 1.50 lakhs
16.	Govt. Land Hill Slope	495/60/1 &549/1/1	08-01-15 Bighas	Firnoo	Sand, Stone & Bajri	1,00,000/- (1 Lakh)

नोट:- उक्त सभी खानें वन संरक्षण अधिनियम, 1980 के प्रावधानों को आकर्षित करती है जिसके लिए Forest Clearance लेना अनिवार्य है।

निविदा एवं नीलामी शर्तें

1. विभाग द्वारा जिला मण्डी में खाली पड़ी लघु खनिज की खानों को हिमाचल प्रदेश गौण खनिज (रियायत) और खनिज (अवैध खनन उसके परिवहन और भण्डारण का निवारण) नियम 2015 के अन्तर्गत खनन हेतु निविदा व खुली नीलामी द्वारा आबंटित किया जायेगा। खनन हेतु रायल्टी

- राशि के एवज में विभाग द्वारा प्रतिवर्ष के आधार पर निविदा/नीलामी राशि वसूल की जायेगी तथा निविदा/नीलामी उच्चतम निविदा/नीलामी देने वाले व्यक्ति के पक्ष में प्रदान की जायेगी।
2. निविदा/नीलामी राशि प्रतिवर्ष के आधार पर ली जाएगी तथा राशि उसी दर पर दो वर्ष तक वसूल की जाएगी, उसके उपरान्त ठेके की शेष अवधि के दौरान निविदा/नीलामी राशि के अतिरिक्त उक्त राशि पर प्रतिवर्ष 10 प्रतिशत बढ़ौतरी चक्रवृद्धि ब्याज की दर से अतिरिक्त राशि वसूल की जाएगी।
 3. निविदा/नीलामी देने वाला व्यक्ति किसी भी जिला में खनन से सम्बंधित देय राशि का बकायादार नहीं होना चाहिए। यदि कोई निविदा/नीलामी देने वाला व्यक्ति विभाग के बकायादार होने का दोषी पाया जाता है तो उस व्यक्ति को निविदा/नीलामी प्रक्रिया में भाग लेने की अनुमति नहीं दी जायेगी। यदि कोई बकायादार व्यक्ति कोई खान निविदा/नीलामी पर ले लेता है, जिसका विभाग को बाद में ज्ञान होता है तो उस अवस्था में उस व्यक्ति द्वारा जमा राशि, बकाया राशि में समायोजित कर दी जाएगी तथा खान का ठेका रद्द करके खानों की पुनः नीलामी आमंत्रित की जाएगी।
 4. सफल निविदा दाता/बोलीदाता एक वर्ष के लिए दी गई बोली राशि की 25 प्रतिशत राशि निविदा/नीलामी खुलने के समय प्रस्तुत करेगा जो कि जमानत राशि होगी। इसके अतिरिक्त निविदा/नीलामी राशि के आधार पर आयकर, पंचायत टैक्स, District Mineral Foundation Fund व अन्य टैक्स/राशि समय-समय पर जो नियमानुसार देय है उच्चतम निविदा दाता/बोलीदाता को जमा करवाने होंगे। प्रथम वर्ष की निविदा/नीलामी राशि के 25 प्रतिशत के बराबर राशि उच्चतम निविदा दाता/बोलीदाता द्वारा Upfront Premium के रूप में जमा करवानी होगी जो कि देय त्रैमासिक किस्त में समायोजित की जाएगी। यह Upfront Premium राशि उच्चतम निविदा दाता/बोलीदाता द्वारा Letter of Intent जारी किए जाने की तिथि से एक महीने की अवधि के भीतर जमा करवानी होगी अन्यथा जमा करवाई गई जमानत राशि को जब्त करके खान को पुनः नीलाम किया जायेगा।
 5. नीलामी के समय दी जाने वाली बोली यदि 10 लाख रुपये की सीमा से बढ़ जाती है तो उस अवस्था में बोलीदाताओं द्वारा अगली बोली 50 हजार रुपये प्रति बोली के आधार पर ही देनी होगी। इसके अतिरिक्त अगर यह सीमा 25 लाख रुपये से बढ़ जाती है तो उस अवस्था में अगली बोली एक लाख रुपये प्रति बोली के हिसाब से देनी होगी।
 6. बोली के दौरान यदि कमेटी को यह आभास होता है कि दी जाने वाली बोली पूलिंग (Pooling) आदि की वजह से संदेहास्पद है या आशानुरूप कम आ रही है तो उस अवस्था में कमेटी को उक्त किसी खान की नीलामी प्रक्रिया को निलम्बित करने का अधिकार होगा।
 7. यदि कोई निविदा दाता/बोलीदाता किसी लघु खनिज खान के खनिज अधिकारों की बोली देता है, परन्तु जमानत राशि निविदा/नीलामी प्रक्रिया सम्पन्न होने के समय जमा नहीं करवाता है या निविदा/नीलामी प्रक्रिया सम्पन्न होने के उपरान्त अनुपस्थित हो जाये, उस स्थिति में उस द्वारा जमा की गई अग्रिम धरोहर राशि जब्त कर ली जायेगी और भविष्य में कम से कम 5 वर्ष के लिए प्रदेश में किसी भी स्थान पर ऐसा व्यक्ति निविदा/नीलामी में हिस्सा नहीं ले सकेगा तथा उक्त खानों/खड्डों की पुनः निविदा/नीलामी आमंत्रित की जायेगी।
 8. जिन खानों/खड्डों के खनिज अधिकारों को निविदा/नीलामी हेतु अधिसूचित किया गया है उनके खसरा नं० या फिर भौगोलिक सीमा/स्थाई चिन्हों की जानकारी, इच्छुक व्यक्ति सम्बंधित खनि अधिकारी से प्राप्त कर सकता है व क्षेत्र का निरीक्षण भी अपने स्तर पर कर सकता है, ताकि क्षेत्र के बारे में पूर्ण जानकारी प्राप्त कर सकें। निविदा/नीलामी केवल उसी क्षेत्र की होगी,

- जो कि अधिसूचना में प्रस्तावित किए गए हैं जिसका पूर्ण विवरण सम्बंधित खनि अधिकारी के कार्यालय से प्राप्त किया जा सकता है।
9. 08 हैक्टेयर तक के क्षेत्र हिमाचल निवासियों के लिए आरक्षित होंगे ताकि स्थानीय लोगों को रोजगार सुनिश्चित किया जा सके। उक्त लाभ प्राप्त करने के लिए निविदा दाता/बोलीदाता को निविदा/नीलामी से पूर्व खनन अधिकारी के समक्ष, अपना हिमाचली निवासी होने का प्रमाण-पत्र (Bonafide Certificate) जो कि सक्षम अधिकारी द्वारा जारी किया गया हो प्रस्तुत करना अनिवार्य है। यदि 8 हैक्टेयर व उससे कम क्षेत्र वाली खड्डों हेतु कोई भी हिमाचली निविदा दाता/बोलीदाता बोली नहीं देता है तो उस अवस्था में कोई भी गैर हिमाचली उक्त खड्डों की बोली दे सकता है।
 10. अगर पीठासीन अधिकारी को लगे कि निविदा/नीलामी द्वारा प्राप्त राशि किसी खान की अपेक्षित राशि के अनुरूप कम है तो उस स्थिति में समिति निविदा/नीलामी द्वारा खान को आबंटित न करने के लिए सिफारिश कर सकती है। खानों के न्यूनतम आरक्षित मूल्य खनि अधिकारी कार्यालय में उपलब्ध हैं।
 11. खनिजों के दोहन हेतु पर्यावरण प्रभाव आकलन (EIA Clearance) तथा वन संरक्षण अधिनियम 1980 के अन्तर्गत (अगर अनिवार्य हो तो) स्वीकृतियां ठेकेदार/सफल निविदा दाता/बोलीदाता द्वारा अपने स्तर पर व अपने खर्च व जोखिम पर सक्षम Authority से Letter of Intent जारी होने की तिथि से दो वर्ष के भीतर प्राप्त करनी होंगी। यदि उच्चतम बोलीदाता इस अवधि में Environment Clearance या वन संरक्षण अधिनियम, 1980 के अन्तर्गत स्वीकृति प्राप्त करने में असमर्थ रहता है तो उस स्थिति में उच्चतम निविदा दाता/बोलीदाता द्वारा Environment clearance व अन्य स्वीकृतियां प्राप्त करने बारे की गई प्रगति की समीक्षा करने के उपरान्त Letter of Intent की अवधि को आगामी एक वर्ष तक समय बढ़ौतरी बारे निदेशक उद्योग द्वारा निर्णय लिया जायेगा तथा इस बढ़ाये हुए एक वर्ष की अवधि तक भी अगर उच्चतम निविदा दाता/बोलीदाता यह स्वीकृतियां प्राप्त नहीं करता है तो Letter of Intent की अवधि के आगामी समय बढ़ौतरी बारे केवल सरकार द्वारा ही निर्णय लिया जायेगा। तदोपरान्त यदि सफल उच्चतम निविदा दाता/बोलीदाता Environment Clearance व अन्य स्वीकृतियां प्राप्त करने में असमर्थ रहता है तो उस अवस्था में Letter of Intent रद्द करके उसके द्वारा दी गई जमानत राशि व अन्य जमा करवाई गई राशियां जब्त कर ली जायेंगी। EIA प्राप्त करने के उपरान्त ही सफल उच्चतम निविदा दाता/बोलीदाता को जिस क्षेत्र के लिए उसने निविदा/नीलामी दी थी उस क्षेत्र में खनन कार्य करने की अनुमति प्रदान की जाएगी। Environment Clearance व वन संरक्षण अधिनियम 1980 के अन्तर्गत की गई प्रगति के बारे में ठेकेदार समय-समय पर विभाग को अवगत करवायेगा।
 12. रेत, पत्थर व बजरी आदि की लघु खनिज खानों की अधिकतम अवधि 10 वर्ष सरकारी भूमि के लिए व वन विभाग से सम्बन्धित 15 वर्ष होगी तथा उच्चतम निविदा दाता/बोलीदाता को खान में कार्य करने से पूर्व अपने स्तर पर पर्यावरण एवं वन मन्त्रालय भारत सरकार से खान क्षेत्र का पर्यावरण प्रभाव आकलन स्वीकृति (EIA Clearance) व वन संरक्षण अधिनियम 1980 के अन्तर्गत स्वीकृति (अगर अनिवार्य हो तो) व Registered Qualified Person is Mining Plan बनवाना अनिवार्य है। उच्चतम निविदा दाता/बोलीदाता के पक्ष में सक्षम अधिकारी द्वारा सरकार से स्वीकृति के पश्चात निविदा/नीलामी खुलने के एक महीने के उपरान्त Letter of Intent जारी किया जाएगा ताकि उच्चतम बोलीदाता खान क्षेत्र का पर्यावरण प्रभाव आकलन स्वीकृति सक्षम Authority से तय सीमा जो कि 2 वर्ष की है के भीतर प्राप्त कर सकें। Letter of Intent में दर्शाई गई शर्तों की अनुपालना के उपरान्त उच्चतम निविदादाता/बोलीदाता के पक्ष में नियमानुसार स्वीकृति आदेश जारी किए जाएंगे ताकि शर्तनामा निष्पादन किया जा सके। शर्तनामा निष्पादन करने से पूर्व सभी औपचारिकताएं पूर्ण करने पर सफल उच्चतम निविदादाता/बोलीदाता द्वारा सम्बन्धित कर आदि के रूप में राशि खनि अधिकारी के कार्यालय में जमा करवाना अनिवार्य होगा व शेष वर्षों में भी 25 प्रतिशत त्रैमासिक किस्त के आधार पर

- बकाया राशि समय-समय पर खनि अधिकारी के कार्यालय में शर्त नं०-2 के अनुसार अग्रिम रूप से जमा करवानी होगी ।
13. निविदा/नीलामी केवल उसी अवस्था में स्वीकार होगी, यदि निविदा/नीलामी किसी सक्षम अधिकारी द्वारा अनुमोदित की गई हो ।
 14. शर्तनामा निष्पादन करने के उपरान्त उच्चतम निविदादाता/बोलीदाता, निविदा/नीलामी में लिए गये क्षेत्र से पांच वर्ष के लिए अनुमोदित Mining Plan के अनुरूप कार्य करेगा । Mining Plan में आकलित खनिज से अधिक मात्रा में खनिज निकालने पर ठेका रद्द किया जा सकता है । पांच वर्ष पूर्ण होने के उपरान्त ठेकेदार को Mining Plan फिर से अनुमोदित करवाना होगा जिसके लिए वह नियमानुसार Mining Plan की अवधि के समाप्त होने से कम से कम 120 दिन पूर्व नवीकरण के लिए आवेदन करेगा ।
 15. नीलामी कमेटी को अधिकार है कि वे नीलामी के समय किन्हीं विशेष परिस्थितियों को ध्यान में रखते हुए अलग से शर्तें लगा सकते हैं जो कि सभी इच्छुक व्यक्तियों को मान्य होंगी । इसके अतिरिक्त खनन सम्बन्धी जो दिशा निर्देश सरकार द्वारा समय-समय पर जारी किए जायेंगे वे भी सभी को मान्य होंगे । नीलामी कमेटी को यह अधिकार है कि वह किसी भी निविदा/नीलामी क्षेत्र को बिना कारण बताए अस्वीकार कर सकती है । निविदा/नीलामी के दौरान यदि कोई बोलीदाता दुर्व्यवहार करता है तो पीठासीन अधिकारी को यह अधिकार होगा कि वह उस द्वारा जमा की गई अग्रिम धरोहर राशि जब्त करते हुये उसे निविदा/नीलामी में हिस्सा लेने के लिए अयोग्य घोषित कर सकता है तथा इस बारे में पीठासीन अधिकारी द्वारा विस्तृत रिपोर्ट सरकार को प्रेषित की जायेगी ।
 16. सफल बोलीदाता द्वारा खनन पट्टे में खनन के दौरान निकले अपशिष्ट पदार्थ व मिट्टी को Mining Plan में दिखाए गए निर्देशों के अनुरूप dumping site में इस तरह से रखना होगा ताकि आस-पास की जमीन को कोई नुकसान न हो ।
 17. सफल बोलीदाता को खान क्षेत्रों में लोडिंग/अनलोडिंग स्थल इस तरह से विकसित करने होंगे ताकि यातायात को कोई बाधा न पहुंचे ।
 18. सफल बोलीदाता द्वारा विस्फोटक अधिनियम, 1884 के तहत उचित लाइसेंस लिए बिना खान क्षेत्र में किसी भी तरह का विस्फोटक नहीं किया जाएगा ।
 19. सफल बोलीदाता/पट्टेदार द्वारा खान क्षेत्र में कार्य करते समय खनन योजना में प्रस्तावित निर्देशों/योजना के अनुरूप ही बैंच की ऊंचाई व लम्बाई निर्धारित करनी होगी एवं Mining Plan में दर्शाई गई योजना अनुरूप ही कार्य करना होगा ।
 20. निविदा/नीलामी पर लिए गए क्षेत्र से उठाए गए खनिज को किसी स्थापित स्टोन क्रशर में उपयोग करने हेतु अनुमति नहीं होगी परन्तु यदि कोई निविदा दाता/बोलीदाता, निविदा/नीलामी पर लिए गये खनिजों को अपने पहले से ही स्थापित स्टोन क्रशर में उपयोग में लाना चाहता है या नया स्टोन क्रशर स्थापित करना चाहता है तो उक्त क्रशर स्थल की दूरी निविदा/नीलामी में लिए गये क्षेत्र से नियमों के अन्तर्गत दर्शाए गई दूरी के अनुसार होनी चाहिए परन्तु इस स्थिति में उसे बोल्टर की खुली ब्रिकी करने की अनुमति नहीं होगी । नया स्टोन क्रशर लगाने हेतु सरकार द्वारा जारी किए गये नियमों/अधिसूचनाओं के अन्तर्गत अनुमति प्राप्त करनी अनिवार्य होगी । इसके अतिरिक्त किसी खान के लिए यदि निविदा दाता/बोलीदाता एक से अधिक व्यक्ति हों तो उस स्थिति में उच्चतम निविदा दाता/बोलीदाता को नीलामी क्षेत्र से उठाए गए खनिजों को अपने पक्ष में पहले से स्थापित केवल एक ही स्टोन क्रशर में प्रयोग करने की अनुमति होगी । लेकिन यदि निविदा-एवं-नीलामी पर दिए जाने वाली लघु खनिज खान का क्षेत्र 2 हेक्टर से कम हो तो ऐसी अवस्था में उक्त खान (2 Hects. से कम क्षेत्र) के आधार पर, नया स्टोन क्रशर स्थापित करने की अनुमति नहीं होगी ।

21. जनहित में यदि आवश्यक हो तो किसी भी निविदा/नीलामी में ली गई खान के भाग को कम किया जा सकता है या खान को पूर्ण रूप से भी बन्द किया जा सकता है। क्षेत्र कम करने की अवस्था में ठेका राशि भी उसी अनुपात में कम की जाएगी।
22. खनन हेतु मशीन उपकरण Mechanical/Hydraulic Excavator/जैसे जे0सीबी0 इत्यादि के प्रयोग की स्वीकृति हि0 प्र0 गौण खनिज (रियायत) और खनिज (अवैध खनन उसके परिवहन और भण्डारण का निवारण) नियम, 2015 व समय-समय पर संशोधित उक्त नियमों के प्रावधानों के अन्तर्गत एवं Environment Clearance में दर्शाई गई शर्तों के अनुरूप ही दी जाएगी तथा सक्षम अधिकारी से स्थल निरीक्षण के उपरान्त इस बारे स्वीकृति लेना आवश्यक है।
23. खान/नदी/खड्ड में पहुंचने के लिए मार्ग बनाने व प्रयोग करने हेतु ठेकेदार सम्बन्धित पक्षों/विभागों से अनुमति अपने स्तर पर प्राप्त करेगा। खान तक पहुंचने के मार्ग के लिए विभाग की कोई जिम्मेवारी नहीं होगी।
24. नीलामी के लिए प्रस्तावित क्षेत्र में यदि कोई निजी भूमि पड़ती है या किसी अन्य/व्यक्तियों के भू-स्वामित्व अधिकार हों तो इस अवस्था में ठेकेदार सम्बन्धित भू-स्वामियों से अपने स्तर पर अनुमति प्राप्त करेगा व इस सम्बन्ध में विभाग की कोई जिम्मेदारी नहीं होगी।
25. बोल्टर व हाथ से तोड़ी गई रोड़ी को राज्य की सीमा से बाहर ले जाने की अनुमति नहीं होगी।
26. अवैध खनन को रोकने हेतु लघु खनिजों का परिवहन रात आठ बजे से प्रातः छः बजे तक प्रतिबन्धित रहेगा।
27. ठेका धारी को सुनिश्चित करना होगा कि उसके द्वारा लगाए गये मजदूर नदी/खड्ड में मछलियों का शिकार न करें।
28. खनन कार्य नदी के धरातल से एक मीटर से अधिक गहराई में नहीं किया जाएगा।
29. खनिजों के एकत्रीकरण से भू-स्वामित्वों के निहित अधिकारों में कोई भी हस्तक्षेप नहीं होना चाहिए।
30. यदि वर्णित शर्तों की अवहेलना होती है या साथ लगते वन क्षेत्र को किसी भी प्रकार की क्षति विभाग के ध्यान में लाई जाती है, तो इस बारे नियमानुसार कार्यवाही अमल में लाई जायेगी।
31. ठेकेदार ठेके पर स्वीकृत क्षेत्र से निकाले गये खनिजों की मात्रा का मासिक व्योरा विभाग को देगा।
32. खनन कार्य हि0 प्र0 गौण खनिज (रियायत) और खनिज (अवैध खनन उसके परिवहन और भण्डारण का निवारण) नियम, 2015 व समय-समय पर संशोधित उक्त नियमों के प्रावधानों, सरकार द्वारा अधिसूचित हिमाचल प्रदेश खनिज नीति, पर्यावरण प्रभाव आकलन/वन संरक्षण अधिनियम, 1980 के अन्तर्गत स्वीकृति की शर्तों के अनुसार, विभाग द्वारा समय-समय पर जारी निर्देशों, माननीय न्यायालयों के आदेशों के अनुरूप किया जाएगा। उपरोक्त नियमों/अधिसूचना/आदेशों की प्रति, खनि अधिकारी कार्यालय से प्राप्त की जा सकती है।
33. ठेके की स्वीकृति व खनन कार्य माननीय सर्वोच्च न्यायालय में लम्बित SLP(C) No. 13393/2008 जो कि माननीय उच्च न्यायालय में हिमाचल प्रदेश द्वारा याचिका संख्या CWP No. 1077/2006 खतरी राम व अन्य के मामले में पारित निर्णय के विरुद्ध दायर की गई है के अन्तिम निर्णय के अनुरूप ही मान्य होगा। इसके अतिरिक्त किसी अन्य न्यायालय द्वारा समय-समय पर इस बारे पारित आदेश भी मान्य होंगे।
34. ठेकेदार या उसका कोई भी कर्मचारी निविदा/नीलामी में लिए गये क्षेत्र की आड़ में यदि कहीं अवैध खनन में संलिप्त पाया जाता है तो उसके विरुद्ध हि0 प्र0 गौण खनिज (रियायत) और खनिज (अवैध खनन उसके परिवहन और भण्डारण का निवारण) नियम 2015, व समय-समय पर संशोधित के प्रावधानों के अनुसार कार्यवाही अमल में लाई जायगी। यदि ठेकेदार या उसका कोई भी कर्मचारी या वाहन अगर बार-बार अवैध खनन व बिना “W” फार्म से ढुलान में सम्मिलित पाया जाता है तो सरकार उसका ठेका रद्द भी कर सकती है।

35. ठेका धारी सरकार को तृतीय पक्ष की क्षतिपूर्ति के लिए जिम्मेदार नहीं ठहराएगा। अतः वह स्वयं जिम्मेदार होगा।
36. सरकार को अधिकार है कि वे उच्चतम बोली को बिना किसी कारण बताये अस्वीकार कर सकती है।
37. सरकार को अधिकार है कि उपरोक्त मद संख्या 1-36 में दर्शायी गई शर्तों के अतिरिक्त अन्य शर्तों ठेका शर्तनामा निष्पादन के दौरान लगा सकती है।
38. सरकार को अधिकार है कि उपरोक्त मद संख्या 1-36 में दर्शायी गई शर्तों, तथ्यों व नियमों की अवहेलना की अवस्था में ठेका रद्द भी किया जा सकता है तथा इस स्थिति में ठेकेदार द्वारा जमा राशि, जमानत राशि, Upfront Premium व त्रैमासिक किस्त जब्त कर ली जाएगी।

[Authoritative English text of this Department Notification No. EXN-F(10)-28/2018 dated 12-10-2018 as required under clause (3) of article 348 of the Constitution of India].

EXCISE AND TAXATION DEPARTMENT

CORRIGENDUM

Shimla-2, the 12th October, 2018

No. EXN-F(10)-28/2018.—In the Notification titled as "37/2018-State Tax" published in Rajpatra, Himachal Pradesh on 3rd October September, 2018 *vide* number EXN-F(10)-28/2018 dated 29-09-2018 at page 5118, the title of the Notification shall be read as "37/2017-State Tax" instead of "37/2018-State Tax".

By order,
(JAGDISH CHANDER SHARMA),
Principal Secretary (E&T).

CHANGE OF NAME

I, No. 1083119W Rank : LD Name Narinder Singh, resident of Village & P.O. Kohala, Tehsil & Distt. Kangra (H.P.) do hereby solemnly affirm and declare as under that as per School records, Adhar Card and Parivar Register the name of my daughter is Priyanka whereas in the Army records in discharge book are name mentioned as Preete Devi whose date of birth is also same *i.e.* 03-03-1996 that Priyanka and Preeti Devi is the same girl. That the deponent deserve to get her daughters name be amended as Priyanka instead of Preeti Devi in the Army records.

NARINDER SINGH,
*Resident of Village & P.O. Kohala,
Tehsil & District Kangra (H.P.).*